

## THE DISTRICT OF COLUMBIA

## ZONING COMMISSION

## PUBLIC HEARING

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|  
IN THE MATTER OF: |  
|  
|

REZONING OF EASTERN SIDE OF | Case No. 00-23MA  
CONNECTICUT AVENUE NW FROM |  
NEBRASKA AVENUE TO JOCELYN ST. |  
|  
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Thursday,  
March 29, 2001

441 4th Street, N.W.  
Suite 220  
Washington, D.C. 20001

The above-entitled matter convened, pursuant to  
notice, at 7:00 p.m. before:

CAROL MITTEM, CHAIRPERSON  
HERBERT FRANKLIN, COMMISSIONER  
KWASI HOLMAN, COMMISSIONER  
ANTHONY HOOD, COMMISSIONER  
JOHN PARSONS, COMMISSIONER

COMMISSION STAFF PRESENT:

ALBERTO BASTIDA, SECRETARY  
GERALD FORSBURG  
MARY NAGELHOUT

OFFICE OF PLANNING PRESENT:

ANDREW ALTMAN  
ELLEN McCARTHY  
JENNIFER STEINGASSER

C-O-N-T-E-N-T-S

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7:10 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, March 29, 2001. My name is Carol Mitten.

Joining me this evening are Vice Chairman Anthony Hood and Commissioners Herb Franklin, John Parsons, and Kwasi Holman.

Copies of today's hearing agenda are available to you and are located to my left at the rear near the door.

The request before the Zoning Commission is for a map amendment to rezone the eastern three blocks of Connecticut Avenue from Nebraska Avenue north to Jocelyn Street from the existing R-5-D district to the R-D district.

This petition was initiated by Advisory Neighborhood Commission 3G in an effort to further the comprehensive plan for that area. This case was originally scheduled to be heard on February 8, 2001, but was rescheduled until today.

Notice of the rescheduled public hearing was published in the D.C. Register on December 15, 2000, and in the Washington Times on December 13, 2000. This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3021, Rulemaking Hearings. The order of procedure will be as follows: Consideration of pending motions and

1 procedural matters, petitioner's case, in this case ANC-3G,  
2 reports or statements by the Office of Planning and other  
3 public agency representatives, persons testifying in support,  
4 persons testifying in opposition.

5 The following time constraints will be adhered to  
6 in this meeting as strictly as possible:

7 Organizations and corporations and representatives thereof will  
8 be given five minutes. Individuals will be given three  
9 minutes.

10 Those presenting testimony should be brief and  
11 nonrepetitive. If you have a prepared statement, please give  
12 copies to staff prior to beginning your testimony and orally  
13 present only the highlights.

14 All persons appearing before the Commission are to  
15 fill out two witness cards. These cards are located near the  
16 door and at the end of each table in front of you. Upon coming  
17 forward to speak to the Commission, please give both cards to  
18 the reporter sitting to my right.

19 If these guidelines are followed, an adequate  
20 record can be developed in a reasonable length of time. Please  
21 turn off all beepers and cell phones at this time so as not to  
22 disrupt these proceedings.

23 Mr. Bastida, do we have any procedural matters?

24 MR. BASTIDA: Yes, Madam Chairman. The staff has a  
25 procedural matter. First is the posting time. The ANC didn't

1 post the site until 20 days prior to this hearing. The usual  
2 time is 40 days. The Office of Zoning would like -  
3 - the staff would like to point out that we have redundancy on  
4 advertisement and the staff had checked with what appeared to  
5 be people in opposition to this case and they are all aware of  
6 the proceedings tonight. Accordingly, the staff would  
7 recommend that the Commission waive its rules on the 20-day  
8 late posting.

9 CHAIRPERSON MITTEN: Do we need a motion on that or  
10 can we do that by consensus?

11 MR. BASTIDA: Usually it's done by a motion.

12 CHAIRPERSON MITTEN: All right.

13 COMMISSIONER FRANKLIN: So moved.

14 VICE CHAIRPERSON HOOD: Second.

15 CHAIRPERSON MITTEN: We have a motion and a second  
16 to waive the posting requirement in this case. All those in  
17 favor, please say aye.

18 ALL: Aye.

19 CHAIRPERSON MITTEN: Those opposed?

20 MR. BASTIDA: Madam Chairman, the staff will record  
21 the vote five to zero. Mr. Franklin moved it and Mr. Hood  
22 seconded it. All the remaining Commissioners voting in the  
23 affirmative.

24 CHAIRPERSON MITTEN: Thank you.

25 MR. BASTIDA: The second is the ANC in accordance

1 to the rules should rule its report 20 days in advance. The  
2 ANC filed it approximately 14 or 15 days in advance. That  
3 requires a waive of the rules of five days to receive the  
4 report into the record.

5 The staff will note that everybody was aware when  
6 the report of the ANC was filed into the record. I don't think  
7 that any harm has been caused to anybody by the late filing.

8 CHAIRPERSON MITTEN: All right. If we find that is  
9 the case, we could always leave the record open.

10 MR. BASTIDA: That is correct.

11 CHAIRPERSON MITTEN: We can decide that at the  
12 conclusion. We would need to waive the timing on the ANC  
13 report.

14 MR. BASTIDA: Correct.

15 CHAIRPERSON MITTEN: Can I have a motion to waive  
16 the --

17 VICE CHAIRPERSON HOOD: Madam Chair, I make a  
18 motion to waive the time on the ANC report.

19 COMMISSIONER HOLMAN: Second.

20 CHAIRPERSON MITTEN: We have a motion and a second  
21 to waive the timing on the ANC report. All those in favor,  
22 please say aye.

23 ALL: Aye.

24 CHAIRPERSON MITTEN: Those opposed. Mr. Bastida.

25 MR. BASTIDA: Yes. The staff will record the vote

1 five to zero. Mr. Hood moved it and Mr. Holman seconded it and  
2 the remaining Commissioners voting in the affirmative.

3 CHAIRPERSON MITTEN: Thank you. Anything else?

4 MR. BASTIDA: Yes. The staff would like to point  
5 out that we have received late this evening two motions. One  
6 from the firm of Shaw Pittman and the second is from Dr.  
7 Richard Docter.

8 CHAIRPERSON MITTEN: I think it's Charles Docter.

9 MR. BASTIDA: Charles Docter. I'm sorry. The  
10 staff would like to remind the Commissioners that this is a  
11 rulemaking case and perhaps you want to affirm that. Usually  
12 there are no parties or cross-examination in these instances.

13 CHAIRPERSON MITTEN: I understand. Maybe this  
14 would be a good time to clarify that we did have -- the  
15 advertisement included that we would hear this case under  
16 Section 3022 which is the contested case rules and this is  
17 appropriately a rulemaking.

18 Because that's less restrictive, we can proceed  
19 under the rulemaking provisions of the ordinance and under  
20 those rules there is no party status. I know several people  
21 had submitted requests for party status and there is no cross-  
22 examination so we will take the correspondence that we received  
23 under advisement.

24 MR. BASTIDA: Thank you. Staff wants to note that  
25 anybody who applied for a party status was called and let know

1 that, in fact, it was a rulemaking case.

2 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.  
3 Anything else?

4 MR. BASTIDA: No, Madam Chair.

5 CHAIRPERSON MITTEN: All right.

6 MS. DWYER: Madam Chair, if I could just address  
7 our motion. Under the Board's -- the Commission's rules a  
8 motion is a preliminary matter even under a rulemaking under  
9 Section 3021.5. We would like the opportunity to address our  
10 motion as a preliminary matter particularly since the substance  
11 of our motion is to dismiss the application.

12 CHAIRPERSON MITTEN: Thank you, Ms. Dwyer. I think  
13 that given the timing of our receipt of your request for  
14 dismissal and discussions that the Commissioners had in  
15 executive session prior to this, we would prefer to take your  
16 request under advisement. If we later would like to take  
17 action on the motion, we will do that. At the moment we are  
18 going to defer any action related.

19 MS. DWYER: Then I would just like to state my  
20 objection for the record because I think under the rules we are  
21 allowed to address our motion. It is not unusual for motions  
22 to come in as preliminary matters. One of the  
23 points of having the opportunity to address it orally is to  
24 allow for discussion of the motion rather than simply everyone  
25 taking the time to read it when it may pertain to the merits of



1 the application. We feel that the issues we've raised are  
2 issues that should be considered by the Commission before even  
3 proceeding with the testimony this evening.

4 CHAIRPERSON MITTEN: Before you step away, let me  
5 just ask Ms. Nagelhout.

6 If we were to proceed as I had suggested, would we  
7 be acting inconsistently with permitted procedures?

8 MS. NAGELHOUT: No, I don't think you would. Ms.  
9 Dwyer has noted her objection and if the Commission chooses to  
10 take the motion under advisement, you can do that.

11 CHAIRPERSON MITTEN: Thank you. All right.

12 I would also just like to call attention to a  
13 matter that I just want to caution people about. There is a  
14 case related to the Sunrise Assistant Living Facility. There  
15 is an appeal that has been filed and we will not hear any  
16 testimony or statements related to that appeal or the merits of  
17 that.

18 If you start to stray into that territory, I will  
19 cut you off because it's likely that one of the people sitting  
20 up here will sit on the BZA for that appeal and we do not want  
21 any ex parte communication to occur. Please just check  
22 yourself.

23 You can mention the facility and we will discuss it  
24 as it is presently allowed by the building permit that has been  
25 issued and that's the context in which we can discuss it. With

1 that we'll move to the petitioner's case, ANC-3G.

2 I believe the two folks that are going to take  
3 control of the case are Ms. Holmes and Mr. Bishop. If you  
4 would identify yourself for the record.

5 I think what we would like to do maybe as a guide  
6 for you since you had suggested that you would need about an  
7 hour. We could set the clock for an hour and then you could  
8 use that to monitor your time. You need to turn on the  
9 microphone. Just turn on the button. That's good.

10 MS. HOLMES: Yes. I'm Marilyn Holmes. I'm an  
11 Advisory Neighborhood Commissioner in ANC-3G 07. With me is  
12 Joseph Bishop. He is the Vice Chair of Advisory Neighborhood  
13 Commission 3G. We have both been designated by ANC-3G to  
14 present ANC's position on this application.

15 Almost a year ago the ANC voted to seek a rezoning  
16 for the stretch of property on Connecticut Avenue from Nebraska  
17 to Jocelyn Street. We appreciate very much the Zoning  
18 Commission's willingness to consider these important issues.  
19 They are of great significance to our community and they also  
20 have implications throughout the city as well and throughout  
21 our broader neighborhood.

22 We have filed a report. I assume you all have  
23 copies of the ANC report? Yes? Yes? Thank you. So I will  
24 not go into any detail about the material that is contained in  
25 the report, but I would like to make just a few key

1 observations. Our petition or application is premised on two  
2 issues.

3 First of all, the fact that the comprehensive land  
4 use plan for the District of Columbia provides that this  
5 stretch of property should be moderate density and the current  
6 zoning designation is not consistent with that.

7 We believe because the comprehensive plan is  
8 legislative enactment and because it includes language within  
9 it that requires that the zoning designations be consistent  
10 with it, that the zoning designation should be changed for  
11 these reasons.

12 Secondly, the current zoning designation for this  
13 stretch of property is inconsistent with both the overall goals  
14 and principals of zoning regulation in the District of  
15 Columbia, and it's also inconsistent with the current use of  
16 the property.

17 We've attached to the petition, and I respectfully  
18 direct your attention to some of the photographs we've attached  
19 to our petition. The photographs labeled Attachment C are  
20 photos of surrounding property adjacent to the stretch of the  
21 property that is in question.

22 As you can see, these are all one and two and  
23 three-story edifices. They are low density. There are some  
24 row houses but they are generally fairly low in scale and very  
25 much low in density.

1           Turning to Attachment D, you can see that the  
2 existing uses of the property in question, the property that we  
3 propose to be down zoned, is of a similar character.

4           There are actually two much larger buildings which,  
5 of course, would be grandfathered but, other than that, the  
6 sweep of property in this area is much more modest scale and it  
7 is important to the neighborhood, and particularly to the  
8 immediate neighbors but to the neighborhood in general that  
9 this area not become a tunnel of major massive apartment  
10 buildings that are not consistent with the openness and the  
11 majesty of Connecticut Avenue in our neighborhood.

12           I have also attached to our petition a witness list  
13 and a summary of the testimony from a number of neighbors who  
14 live in houses very close to the area that would be affected by  
15 the down zoning, some of whom live in property that would, in  
16 fact, be affected by the down zoning.

17           I would like to turn to ask these neighbors to  
18 provide their presentations to you at this time.

19           CHAIRPERSON MITTEN: That's fine.

20           MS. HOLMES: First I would call Ann Page Chiapella.  
21 She goes by Page. Excuse me. Page Chiapella.

22           CHAIRPERSON MITTEN: You need to turn on the  
23 microphone and then just identify yourself for the record.

24           MS. CHIAPELLA: My name is Page Chiapella. I live  
25 at 5126 Nebraska Avenue. I'm president of the Nebraska Avenue

1 Neighborhood Association.

2 I would like to point out that we are talking about  
3 a strip of land that is only 75 feet deep on the most northern  
4 block, 60 to 125 feet deep on the most southern block, and 175  
5 feet deep in the middle block.

6 With the exception of two high rises, these three  
7 blocks share many similarities including narrowness of the R-5-  
8 D zone strip, narrow congested alleys behind the current  
9 residences, and limited on street parking because these are on  
10 rush hour snow emergency streets. Connecticut Avenue along the  
11 front and Nebraska Avenue along the southern side of one of the  
12 blocks.

13 Neighbors and residents of this area will now  
14 describe the many effects that these elements have on our daily  
15 lives and the major negative impact that would occur from  
16 additional high-density development along this narrow strip.

17 MS. HOLMES: I would like to ask Martha Thompson to  
18 make her remarks.

19 MS. THOMPSON: I'm Martha Thompson and my home is  
20 located at 5120 Nebraska Avenue N.W., lot 94, square 1989. My  
21 home borders the Nebraska Avenue, square 1989 alley at its  
22 entrance closest to Connecticut Avenue.

23 My concern is if the down-zoning proposal is not  
24 accepted is that the buildings of increased height and density  
25 in the narrow strip of land between the alley and Connecticut

1 Avenue will greatly increase congestion in the narrow  
2 residential alley such that it will become completely grid  
3 locked and resulting damage to my property will increase.

4 Those of us who live in square 1989 share use of  
5 the alley with neighbors who also reside in square 1989 along  
6 Connecticut Avenue, Chevy Chase Parkway, Ingomar Place, and  
7 Nebraska Avenue.

8 Most often the alley provides the only vehicular  
9 access into and out of our homes since parking along  
10 Connecticut Avenue and Nebraska is restricted during rush  
11 hours.

12 Restricted parking compounds alley congestion since  
13 parking for access to our homes is usually from the alley and  
14 not from on-street parking in front of our homes.

15 In traveling through the alley to park our cars at  
16 our homes, we have to compete for alley use with large vehicles  
17 which travel through the alley routinely, vehicles providing  
18 collection and distribution services such as city garbage  
19 trucks, privately contracted waste management trucks, private  
20 school buses, spring water delivery trucks, Fed-Ex trucks, mail  
21 delivery trucks, repair vans and trucks as they are required to  
22 make various house call repairs and renovations.

23 Here are some examples of the trucks to just give  
24 you an idea of the scale of the trucks and the size of the  
25 alley. Waste management truck, a garbage truck, and another

1 waste management truck. During rush hour traffic is prohibited  
2 from making certain left turns at the Connecticut/Nebraska  
3 intersection. Our narrow alley becomes the first  
4 opportunity for traffic to turn around, get back to Connecticut  
5 Avenue, turn right, and travel north on Connecticut Avenue.  
6 Turning left into the alley from Nebraska Avenue during rush  
7 hour is difficult and adds to congestion both on Nebraska and  
8 in the alley.

9 With the proximity of Murch, Deal, and Wilson  
10 schools, children are often picked up by persons who pull their  
11 cars into the alley and wait there for the children to be  
12 picked up. This occurs at the entrance to the alley  
13 immediately beside my home.

14 Today residences along Connecticut Avenue that  
15 share our alley mostly conform to R-3 zoning. If these  
16 residences were replaced with buildings that conform to the  
17 current zone of R-5-D, the alley would become impassable.

18 The alley lightly constructed in the 1920s when  
19 these residences were built is narrow and does not allow two  
20 trucks or vehicles to pass and congestion today is significant.

21 You can see there is no way. That truck fills up the alley.

22 Most often as heavy trucks, garbage, recycling,  
23 waste management, Fed-Ex, school buses, etc., as they make  
24 their way through the alley have to trespass on my brick  
25 parking path to create room to pass as they enter or exit the

1 alley.

2 This is right at my home, the brick parking. This  
3 is a spring water truck. Consequently there's been damage to  
4 my brick parking floor due to the heavy weight and constant use  
5 by these vehicles.

6 In addition, the alley is so narrow at the  
7 entrance, which at its widest point is only 17 feet, that  
8 garbage trucks have to encroach on the grass boulevard in order  
9 to make the turn into the alley.

10 Vehicles have on several occasions knocked down my  
11 picket fence and post at the front corner of my property  
12 bordering the alley entrance. This just shows you that fence  
13 and the post right there at the narrow entrance.

14 Because of restricted parking on the streets, often  
15 mail trucks, Fed-Ex trucks, strangers needing a place to park  
16 will use my brick driveway for parking as they need it.

17 In square 1989 the land between Connecticut Avenue  
18 and the alley is so narrow and the alley so narrow, in some  
19 places only 14 feet wide, that my back fence has been hit many  
20 times as cars enter and exit their parking spaces located  
21 across the alley from my house.

22 When I had to have my back fence replaced, I  
23 installed concrete filled steel posts along my back fence to  
24 protect it. You can't see the post but you can see this is my  
25 back fence and the parking across the alley is for the



1 residences along Connecticut Avenue. It's very narrow. They  
2 hit my fence and back into it.

3 These issues of damage to my property arising from  
4 the narrow alley, restricted and limited street parking  
5 creating congestion in the alley would be multiplied in direct  
6 proportion to the increase in density if the comprehensive  
7 plans requirement for moderate density is not adopted.

8 The value of my property would decrease and the  
9 character of our residential neighborhood would forever be  
10 changed. I implore you not to make these matters worse.  
11 Please accept the ANC-3G's recommendations and vote to down  
12 zone these three blocks. This will allow these blocks to be  
13 brought in line with the moderate density as outlined in the  
14 comprehensive plan and as required by city law.

15 For purposes of gravity and specificity in my  
16 remarks, I have omitted lengthy mention of other issues of  
17 increased density and building height such as increased shadows  
18 cast by higher buildings, their effect on our gardens, less  
19 sunlight, on melting snow and ice in the alley, increase in rat  
20 population with more garbage in the alley, and safety; children  
21 playing basketball and riding bicycles with increased alley  
22 traffic.

23 MS. HOLMES: Thank you, Martha. Is Tim Welsh  
24 available?

25 Tim Welsh is going to discuss the need for alley

1 accessibility in the event of emergencies.

2 MR. WELSH: Do I give these to somebody now or  
3 later?

4 CHAIRPERSON MITTEN: Yes, the reporter.

5 MR. WELSH: My name is Timothy Welsh and together  
6 with my wife, Mary C. Horton, and our three children, we live  
7 at 5122 Nebraska Avenue. Our house is on the alley behind  
8 Connecticut Avenue and specifically would be affected by any  
9 large scale building across the alley from us.

10 In all the proposed plans for a building in that  
11 block, our home is directly across from loading docks because  
12 we are right at the turning point of the alley.

13 Due to parking restrictions in our neighborhood, we  
14 cannot park our one car in front of our house. We must use the  
15 space behind our house on the alley. The alley there is  
16 narrow. If trucks are parked at the loading dock, we will be  
17 blocked in.

18 My wife and my two children suffer from auto immune  
19 diseases. We have had many emergency trips to doctors and  
20 hospitals in the last two years.

21 If a large commercial building existed on the alley  
22 there, there would be delivery trucks for linens and food,  
23 repair trucks, electrical, TV, plumbing, etc., garbage trucks,  
24 and frequent moving vans, many of these parked for extended  
25 periods of time. When we have a medical emergency, we need to

1 get out right away. This alley was not designed for trucks  
2 parked at loading docks.

3 In addition, the alley is so narrow these trucks  
4 would have difficulty turning around. They would be backing  
5 into our small parking space. The current spur enables us room  
6 to turn our car around. Without it we'll have trouble doing  
7 just that, turning around.

8 What will large trucks do? They will move into our  
9 space where the kids have a little room for a basketball hoop.

10 Other children ride bikes in the alley. The danger of  
11 commercial vehicles to the safety of children of a residential  
12 neighborhood should be apparent.

13 Our medical needs make this concern even greater.  
14 Please do not allow development of large buildings along this  
15 section of Connecticut Avenue. Thanks.

16 MS. HOLMES: Thank you, Tim.

17 I would like to ask Anastasia Seremetis to deliver  
18 her remarks comparing the impact on the alley during  
19 construction of an R-5-D versus a lower density zoning project.

20 MS. SEREMETIS: My name is Anastasia Seremetis. My  
21 husband and I reside at 5142 Nebraska Avenue, N.W., Washington,  
22 D.C., lot 143, square 1989. My testimony consist of a  
23 comparison between the construction of an R-5-D building to  
24 that of an R-2 or R-3 in the same location.

25 We have already discussed about the narrowness of

1 that strip of land between Nebraska and Chevy Chase Parkway so  
2 I won't repeat it again. The impact of construction on the  
3 alley in the immediate neighborhood of an R-5-D building should  
4 be pointed out.

5 Please consider that (1) during the demolition  
6 stage of 10 houses built during the '30s the encapsulation and  
7 disposal of asbestos, lead, dust, etc., needs to be  
8 ascertained. (2) The expansion of spill-over during  
9 construction of a seven-story building is considerable.

10 CHAIRPERSON MITTEN: Ms. Seremetis, I'm just going  
11 to -- I want to make sure that does not represent a specific  
12 building.

13 MS. SEREMETIS: This is generic. That's what I'm  
14 coming down to. This is a generic plan of a building that has  
15 received permission. It's just a generic and the existing plan  
16 comes from the survey office of the building.

17 MS. HOLMES: If I could just interject and clarify  
18 that her remarks may be applicable to any hypothetical building  
19 of the size that would be permitted in an R-5-D district.

20 CHAIRPERSON MITTEN: All right. Go ahead.

21 COMMISSIONER HOLMAN: But, Madam Chair, I thought  
22 she said that was a representation of a building that was under  
23 consideration. I thought that was what I heard.

24 MS. SEREMETIS: This is a generic. It happens to  
25 be a generic plan of a building which is being considered to

1 build there. It's a generic building. It's a generic scheme.

2 CHAIRPERSON MITTEN: Let's do this. Could we just  
3 take that down and try and make sure your comments would apply  
4 equally to that entire block front on Connecticut. Okay?

5 MS. SEREMETIS: But it gives you an idea. As to  
6 any building. Fine.

7 The number one point that I made is still valid.  
8 The number two now. The percentage of a lot occupancy of an R-  
9 5-D building is 75 percent. The footprint is indicated -- as  
10 was indicated in the plan that was removed from there.

11 CHAIRPERSON MITTEN: Which we've wiped out of our  
12 minds.

13 MS. SEREMETIS: Which you've wiped out of your  
14 minds. You have to figure I need, though, to have the second  
15 drawing. Can you please turn it around and set up that? Is  
16 that agreeable?

17 CHAIRPERSON MITTEN: That's good.

18 MS. SEREMETIS: Okay. Now, that's the building how  
19 it is through the area so we can really designate that  
20 particular area considering it begins, let's say, four down.  
21 One, two, three, four. Even lower down from about there all  
22 the way to the corner.

23 Seventy-five percent is the -- well, the basement  
24 garage and underground facility is even larger than what the  
25 footprint is because it's a very narrow lot and it has to go

1 underground for it.

2 The excavation for the foundation would be made a  
3 few feet even beyond that. That gives you a huge gaping  
4 excavation. The need for adequate parking and housing the  
5 engineering equipment of a 90-foot high apartment house or  
6 other R-5-D facility requires excavating a wider area than the  
7 allowed 75 percent.

8 The area around the foundation cavern would require  
9 space for cranes, scaffoldings, heavy equipment, trucks hauling  
10 and loading and unloading, storing of tools and supplies,  
11 building materials, dumpsters, personnel vehicles, and cranes.

12 This particular site cannot sustain the scope and caliber of  
13 an activity described above.

14 In maintaining the nature of the existing  
15 buildings, which you see back there in reference to plan No. 2,  
16 it should be noted that the percentage of lot occupancy will  
17 remain 40 percent and the height of the buildings 40 feet.  
18 That is three stories high.

19 Since the footprint is smaller there will be far  
20 more space remaining within the lot for storing equipment,  
21 etc., and fewer supplies needed for construction. A choice  
22 emerges of renovating, modernizing, rebuilding dwellings and  
23 flats of low or medium density apartment houses.

24 In this case the caliber of the construction  
25 activity will not overpower existing alley and bordering homes.

1       There will be smaller scale construction which will be  
2       lessening the impact on the neighborhood.

3               Please accept the down zoning recommended by ANC-3G  
4       in accordance to the comprehensive plan of Connecticut Avenue  
5       and the general character of the neighborhood. Thank you very  
6       much, ladies and gentlemen.

7               MS. HOLMES: Thank you.

8               Marsha Murphy and would Dedre Flippan like to join  
9       her? No? Okay.

10              We had listed also Dedre Flippan as a witness.  
11       She's not going to be making a presentation this evening.  
12       Marsha Murphy will be talking about building density and the  
13       need for open space and light in our community.

14              MS. MURPHY: Good evening. My name is Marsha  
15       Murphy. My husband and I live at 5229 Connecticut Avenue,  
16       N.W., on the corner of Connecticut and Jennifer Street which is  
17       directly in the area under consideration for down zoning.

18              For the past seven months I have been living next  
19       door to an R-5-D construction site and I'm here tonight to  
20       share some of my experiences of that.

21              My neighbors and I have experienced first hand many  
22       of the negative side effects already mentioned here this  
23       evening. Lack of parking, congested or blocked access to the  
24       alley, noise from the sound of the construction, as well as  
25       from the music the contractors play while working.

1           Environmental changes.     The trees which divided our  
2     property were abruptly uprooted without notice, and the  
3     pictures I have submitted show what our property looked like  
4     before and after that occurred.

5           Change in the aesthetic appeal.     The structure  
6     being built behind our unit has now blocked all the natural  
7     sunlight on the second and third floors and has completely  
8     eliminated our view.

9           We have also experienced a lack of privacy.     The  
10    new structure has windows which are directly opposite the  
11    preexisting windows in my bathroom and hallway.

12          However, the most disturbing aspect of my  
13    experience has been the amount of personal time I've had to  
14    exert to police the construction occurring next door.

15          In a perfect world construction would be conducted  
16    in accordance with the city's regulations as specified in the  
17    building permit.     However, my personal experience has proven  
18    that this is not always the case.

19          In our unique situation there have been a number of  
20    inconsistencies in the work performed next door.     As we all  
21    know, the city has very limited resources.     Therefore, my  
22    neighbors and I have had to expend a tremendous amount of time  
23    and energy to monitor the situation including coming downtown  
24    to obtain a copy of the work permit, purchasing a copy of the  
25    building plans, studying the plans and the permit, learning



1 about building and zoning restrictions, and interacting  
2 religiously with city officials to point out inconsistencies,  
3 and to work to ensure the lawful execution of the proper  
4 regulations.

5 This has taken a tremendous amount of time and this  
6 construction is only for a purported addition to a single  
7 family residence. Larger developments as allowed under the  
8 current zoning would require exponentially more attention by  
9 the neighbors.

10 Should the ANC's down-zoning proposal be approved,  
11 this would alleviate a huge burden on the neighborhood  
12 residents and allow them to again enjoy the neighborhood  
13 without the threat of potentially inconsistent developments  
14 being constructed in their backyard.

15 After eight years of living in the more densely  
16 populated southern corridor of Connecticut Avenue, I moved to  
17 my current residence a little more than two years ago. I was  
18 drawn to this area because of its special charm and character  
19 as envisioned by our city's planners in the comprehensive plan  
20 that was discussed earlier this evening.

21 Over development is beginning to detract from the  
22 neighborhood's elegance and diminish its appeal. Tonight I  
23 respectfully request that the ANC's down-zoning proposal be  
24 adopted in order to preserve the integrity of the neighborhood  
25 and to ease the burden on the area residence. Thank you.

1 CHAIRPERSON MITTEN: Thank you.

2 MS. HOLMES: Thank you, Ms. Murphy.

3 Is Ken Pasmanick here?

4 MR. PASMANICK: Yes, I'm here.

5 MR. HOLMES: Mr. Pasmanick is going to talk about  
6 the family oriented neighborhood, quality of life there,  
7 importance of access to sun and sky, and parking availability.

8 MR. PASMANICK: Good evening. My name is  
9 Kenneth Pasmanick. My wife and I moved with our two children  
10 42 years ago to 5227 Chevy Chase Parkway, square No. 1989, lot  
11 No. 0132. It was a quiet, friendly, easy street. Connecticut  
12 Avenue, the next street over, had like ours semi-detached  
13 homes, what we now call town houses.

14 It was also a regular neighborhood street. My wife  
15 is a lifetime Washingtonian. We never moved to the suburbs.  
16 She was admissions director at the Georgetown Day School for 33  
17 years. I was the first bassoonist with the National Symphony  
18 Orchestra for 50 years. We have loved our city and have  
19 supported it through all its travails.

20 We here tonight are the working active population a  
21 city wants. We have watched houses on Connecticut Avenue being  
22 torn down and buildings going up, the Regency, the Huntington,  
23 and the Jocelyn. It seemed fine and appropriate. Now, though,  
24 our resources have been spent and any new large buildings will  
25 sap every inch of the resources which remain.

1           Our street cannot take more traffic. Our alleyways  
2           are travelled and used to capacity. We came to live in this  
3           Chevy Chase area thinking there would be a place to breathe and  
4           have safe access to our alley, see the sky, walk to school.

5           Additional high rises will change the character of  
6           our community completely. We need to put up what was there  
7           before, town houses like the buildings across Connecticut  
8           Avenue where the residents' battle was won. Any new  
9           construction needs to be consistent with what currently exist  
10          in height and density.

11          Mayor Williams visualized a renaissance for  
12          Washingtonians, a Washington with livable neighborhoods. In  
13          the mayor's words, building a city that works for everyone  
14          neighborhood by neighborhood.

15          I ask for a new and aware look at our zoning codes  
16          to make sure they are appropriate for now. A zoning code that  
17          is humane to guard the quality of life for those who have  
18          chosen to have faith in and live in and commit ourselves to  
19          this wonderful city of ours. Thank you.

20          CHAIRPERSON MITTEN: Thank you.

21          MS. HOLMES: Thank you, Mr. Pasmanick.

22          Courtney Bergeron is going to address the character  
23          of the residential neighborhood, real estate investment issues,  
24          property resell values if the quality of the neighborhood  
25          changes.

1 MS. BERGERON: Good evening. My name is Courtney  
2 Bergeron. I live with my husband Carl at 5138 Nebraska Avenue,  
3 N.W., lot 102, square 1989.

4 We moved from Chicago to Chevy Chase, D.C., in  
5 November 2000. In our search for a home in Washington we  
6 looked at several neighborhoods in the city including AU Park,  
7 Woodly Park, Cleveland Park, and Mount Pleasant. We were  
8 struck by the tenor of the neighborhood in the Nebraska Avenue  
9 area liking the older homes that were built with character.

10 In addition, we liked the mix of commercial and  
11 residential properties that we found in Chevy Chase. We felt  
12 that we could settle there for many years.

13 We also considered the value of the properties we  
14 looked at in our search. Buying a home was a tremendous  
15 investment for us and, therefore, as many home buyers are, we  
16 were concerned about the economics of the situation.

17 We chose our home because of its character and the  
18 open feel of the neighborhood surrounding it and anticipated  
19 that our value would increase with time because of the  
20 desirable location and neighborhood. We are concerned that  
21 aggressive development in our immediate area will erode the  
22 value of our property.

23 Down zoning the three-block stretch of Connecticut  
24 Avenue, N.W., between Jocelyn Street and Nebraska Avenue will  
25 provide a lasting guard against over development of the Chevy

1 Chase, D.C. neighborhood.

2 While we welcome appropriate development, the  
3 density of development allowed by an R-5-D zoning designation  
4 is out of character with the existing neighborhood. Making the  
5 choice to down zone these blocks will preserve the value and  
6 character of Chevy Chase, D.C. effectively.

7 Please make your recommendation in support of the  
8 down zoning proposed here this evening. Thank you.

9 CHAIRPERSON MITTEN: Thank you.

10 MS. HOLMES: John Frye is going to address safety  
11 issues relating to the alley behind Connecticut Avenue off of  
12 Nebraska Avenue.

13 DR. FRYE: Good evening. I'm John Frye at 5126  
14 Nebraska Avenue. All that has been said this evening falls  
15 under my concern and I will summarize some of that. You have  
16 heard people describe the alley and you might have wondered how  
17 it could have been so troublesome. Let me assure you that it  
18 is.

19 The local ANC reasoning together with the neighbors  
20 saw the problem in the original design of the alley. It was  
21 designed close to Nebraska Avenue with two accesses from  
22 Nebraska Avenue for entrance/exit. The result of this design  
23 left the alley shallow, more parallel to Nebraska than oval and  
24 quite narrow.

25 It was to service only residential housing on

1 Connecticut Avenue, Nebraska Avenue, Chevy Chase Parkway, and  
2 Ingomar Avenue, which it has done with difficulty. Since  
3 Nebraska Avenue is a major street, parking is not permitted on  
4 the street during rush hours making the alley vital to the life  
5 of the community.

6 All the houses on the streets mentioned have  
7 parking in the alley. In the morning residents leave for work  
8 as many as two houses per household.

9 About the same time the school bus picks up children.

10 Because it is nearly impossible to enter Nebraska Avenue  
11 during rush hour in the morning, a traffic jam often results.  
12 This is bad but it gets worse. The sanitation department also  
13 comes into the alley for collection on certain days except  
14 during snow and ice when the alley is not cleared.

15 During this time the trash cannot be collected for  
16 as long as three weeks on occasions. Some people get stuck in  
17 the alley in the snow with their neighbors, with the trash  
18 during bad weather.

19 We're not trying to be mean or selfish. The alley  
20 is overcrowded, as safety hazard, and a public relations  
21 nightmare. In this alley which serves 51 residential units  
22 presently, with difficulty, there has been building proposals  
23 that would add 102 new living units tripling the number of  
24 units to be serviced through the alley, 18 wheelers delivering  
25 food and supplies, sanitation trucks picking up trash, and

workers entering underground parking facilities through the alley from Nebraska Avenue.

One shutters to think that a fire truck or fire engine would need to get access to a building in this alley. The resources are stretched before new proposals to triple the number of living units. It is obvious you can't put 50 pounds of potatoes in a ten-pound bag. To do so is not only dangerous but irresponsible.

Over the years there have been various proposals to build on this strip of property and the community has come forward, as it is now, to say it is not safe to build there. The residents explained their concerns and the developers assured the community that their concerns had already been solved or would be resolved.

I'm a psychologist by training and profession. One of the issues that is important to families, communities, and businesses, big or small, is safety.

From a psychological perspective safety involves a need people have to live in an environment that is predictable, one in which you know how to escape harm and maximize health. This implies that the people who construct the environment can be trusted. Safety and trust are bound together.

The Oxford dictionary defines trust as the reliance on the truth without examination. During the history of proposals for this property, we have been assured that our

1 safety concerns have been resolved. However, upon examination  
2 we discovered that this was not true. We have learned that we  
3 cannot trust our safety, our children's safety, or a neighbor's  
4 safety to others.

5 I am reminded of the wisdom of Woody Allen, to  
6 paraphrase, when the lion lays down with the lamb, the lamb  
7 will not sleep. That's the way we sometimes feel working with  
8 the developers. Again, the down zoning resulted from the local  
9 ANC-36 and the neighborhood reasoning together you can't put 50  
10 pounds of potatoes in a 10-pound bag.

11 Neither should you permit high density building on  
12 a strip of land that was meant to handle single family  
13 residential housing. To do so would be irresponsible. Thank  
14 you.

15 MS. HOLMES: Thank you, Mr. Frye.

16 Now Page Chiapella had some additional remarks.

17 MS. CHIAPELLA: I want to thank you again for your  
18 time and I would like to also ask for a clarification because I  
19 had a paragraph that may deal too closely with an application  
20 and I want to stay away from any material.

21 CHAIRPERSON MITTEN: If you would like to excise  
22 that from your written testimony and then hand it in later,  
23 that would be fine.

24 MS. CHIAPELLA: Okay. So I'll pull that out now  
25 and I'll pull it out from the written material.



1 CHAIRPERSON MITTEN: Thank you.

2 MS. CHIAPELLA: As you can see, there would be  
3 major increases in the density of buildings, population,  
4 traffic, and the need for services in our area. Shadows would  
5 impact on neighboring property. Snow and ice in these shady  
6 alleys without the sun to melt the snow would cause a  
7 substantial increase in dangerous and icy conditions in the  
8 winter.

9 There would be increase in blockage and delay in  
10 residents accessing their homes. A nuisance, at best, but  
11 dangerous during emergency situations. In addition, with the  
12 potential for high-density development, the alley becomes  
13 extremely attractive to potential developers who have  
14 repeatedly attempted to close our alley stub or in other ways  
15 impinge on the alley.

16 The alley stub, the alley that is bordered by  
17 Connecticut Avenue and Nebraska, serves as a major turning-  
18 around spot, pull-off spot for residents, for other vehicles  
19 which can't pass in the narrower parts of the alley. It's used  
20 on a regular basis and provides safety and an ease for traffic.

21  
22 Also it's used by commuter traffic. When they  
23 can't turn around and make a left turn at the intersection of  
24 Connecticut and Nebraska, our alley serves as a turn-around  
25 site for them.

1           And these potential development assaults on the  
2 alley have been a potential -- have been a substantial drain on  
3 neighborhood energy as has already been mentioned.

4           The applications for alley closings in particular,  
5 and other applications, have had significant errors in them and  
6 DCRA with its limited resources has not been able to adequately  
7 evaluate the projects.

8           CHAIRPERSON MITTEN:     You're not speaking about  
9 anything that's on appeal. Are you?

10          MS. CHIAPELLA: No, I'm not.

11          CHAIRPERSON MITTEN: Okay.

12          MS. CHIAPELLA: No. We've had repeated instances  
13 so I'm speaking of the other instances.

14          CHAIRPERSON MITTEN: All right.

15          MS. CHIAPELLA: Okay. In 1988 the city council  
16 defeated a bill to close part of the alley. The bill claimed  
17 this closing was for safety and to provide green space and  
18 gardening. However, at the same time we realized and found out  
19 that there was a proposal for high-density development. Only  
20 our substantial effort helped defeat this bill which was, as I  
21 said, voted down by the city council.

22                 In 1999 came another alley closing proposal and the  
23 applicants claimed that this alley was not useful for alley  
24 purposes. You can see that is not true. The alley closing  
25 proposal was stated for the purpose of building 110,000 square

1 foot building on the site. That is not the current  
2 application.

3 The application was initially to be built on the  
4 alley stub that was to be closed. With a high-density  
5 development, that could add close to 7,000 more square feet to  
6 the size of the building.

7 That's the end of my examples and I will expunge  
8 any other material that you might find inappropriate.

9 The remapping will substantially ease this burden  
10 on our neighborhood and on the city. It will limit what could  
11 be built in and on our alleys. It will help build trust and a  
12 healthy environment.

13 Current buildings would be grandfathered in,  
14 current buildings along the strip that may be beyond this  
15 suggested down-zoning level, as would any other potential  
16 buildings that might be grandfathered in.

17 In addition, using planned urban developments, or  
18 PUDs, future projects could go beyond the limits of strict  
19 zoning regulations. The PUD mechanism was used for planning a  
20 project at the corner of Military and Connecticut Avenues.  
21 That involved the developer, the neighborhood, and the city.

22 This PUD mechanism allows all these groups to work  
23 together. In our case, help has happened. We strongly urge  
24 you to support the remapping proposal. Thank you. My  
25 materials will come in shortly. Thank you.

1 MS. HOLMES: Commissioner Bishop has some remarks  
2 as well.

3 MR. BISHOP: I have a very brief statement. I  
4 would like to call your attention to the fact that in November  
5 1999 and January of 2000 the mayor held two very large forums  
6 addressing the quality of the neighborhood.

7 What we've heard tonight is consistent with what  
8 was stated at that forum, protecting, maintaining the beauty  
9 and peace and quality of the neighborhood. Thank you.

10 CHAIRPERSON MITTEN: Thank you very much.

11 MS. HOLMES: Well, it's very tempting to look at  
12 the clock there and think I have 17 more minutes to try to  
13 persuade you all but I'll resist the temptation. I'll  
14 summarize as quickly as possible.

15 Our position at the ANC is that the existence of a  
16 comprehensive land use plan that designates this property, this  
17 whole stretch of property as moderate density really is the  
18 only issue that you need to consider.

19 If you take a look, we've provided you with  
20 excerpts from the comprehensive land use plan. Moderate  
21 density residential land use category is defined on that map  
22 and for these purposes as including row houses and garden  
23 apartments as the predominate uses. And it may also include as  
24 appropriate uses low-density housing.

25 The R-5-D district, as you well know, permits

1 buildings as high as 90 feet with exaggerated floor area ratios  
2 that are completely inconsistent with the characteristics I've  
3 just described to you. As I said, that should answer the  
4 question. It should be adequate to resolve the application  
5 that we've made.

6 It's worth pointing out that if we were coming  
7 before you afresh, if we had the opportunity to approach the  
8 Zoning Commission and say starting from scratch what is the  
9 appropriate zoning for this neighborhood, it's pretty clear  
10 looking at the standards that are in the statute, that are in  
11 the zoning regulations, the factors that the Zoning Commission  
12 is supposed to consider in designating zoning for particular  
13 property, this property would never be designated R-5-D.

14 The issues that the Zoning Commission looks at,  
15 that the city council and the mayor have directed the  
16 Commission to look at address really two issues.

17 First, the regulations are intended to protect and  
18 enhance the city's livability and that considers factors such  
19 as preventing undo concentration of the population, undue  
20 overcrowding of land, promotion and distribution of the  
21 population throughout the area, lessening congestion in the  
22 streets and, I might add, in the alleys as well, and providing  
23 adequate light and air to the residents of the community.

24 Also, the regulations are intended to take into  
25 account the character of the respective districts and their

1       suitability for use provided in the regulations.

2               It's clear from the testimony you've heard, from  
3       the information that we've submitted to you, that the general  
4       character of this neighborhood is moderate density as described  
5       in the land use plan. It is low-rise, town house, some row  
6       houses, a few modest garden style apartments.

7               It's also clear that not only the neighboring land  
8       but the existing land has been developed in a comparable  
9       fashion with only two exceptions, both of which, of course,  
10      would be grandfathered in.

11              So we respectfully request that you consider not  
12      only the comprehensive land use map. Of course, it's been  
13      in effect for 15 years. We think it's time to try to reconcile  
14      the actual zoning with the city's intentions expressed 15 years  
15      ago.

16              We also ask that you look at the factors present in  
17      the zoning regulations and, if you do so, I'm confident that  
18      you will reach the same conclusion that the ANC has, which is  
19      that this area of property needs to be down zoned as we've  
20      recommended. Thank you.

21              CHAIRPERSON MITTEN: Thank you.

22              MS. HOLMES: Anybody have any questions?

23              CHAIRPERSON MITTEN: That's what we're going to go  
24      to next. Maybe you could facilitate getting answers if there's  
25      questions that you would find it helpful for some of your

1 colleagues to respond to.

2 PARTICIPANT: Madam Chairman, I would --

3 CHAIRPERSON MITTEN: Sir, you're going to need to  
4 speak to staff if you have an issue.

5 PARTICIPANT: I've decided to speak.

6 CHAIRPERSON MITTEN: We're going to take persons in  
7 support and in opposition at the conclusion of the hearing.  
8 Thank you.

9 Any questions for the ANC? Please.

10 COMMISSIONER FRANKLIN: Does anyone know what the  
11 history of that alley stub is? Was it at one point a through  
12 alley that was closed? It seems to me a rather anomalous  
13 physical conditions in that block. Does anyone have any  
14 historical information?

15 I'm just kind of curious as to why -- well, if  
16 there is somebody who will testify later, I would be interested  
17 in knowing the history of that rather strange stub.

18 MS. HOLMES: I'm sorry. We don't seem to have that  
19 information. It certainly has --

20 MS. SEREMETIS: Marilyn, I do know --

21 CHAIRPERSON MITTEN: Come forward and speak into  
22 the microphone, please.

23 MS. HOLMES: Identify yourself.

24 MS. SEREMETIS: Anastasia Seremetis.

25 CHAIRPERSON MITTEN: We remember.

1 MS. SEREMETIS: I just know about that alley that  
2 it was built around -- it was settled around 1925. It was at  
3 the same time that they were also making the overall plan of  
4 that whole block that has such a geometric perfection. That's  
5 all I know if it's any help to you.

6 COMMISSIONER FRANKLIN: In other words, you don't  
7 know whether that at one point went through to the street?

8 MS. SEREMETIS: No, it never went through.

9 COMMISSIONER FRANKLIN: It never went through.

10 MS. SEREMETIS: Yes, it never went through.

11 COMMISSIONER FRANKLIN: Oh, you know that it never  
12 went through.

13 MS. SEREMETIS: As far as I know, it never went  
14 through.

15 MS. HOLMES: I don't know the history of it but if  
16 you look at the -- I know that's it hard for you to see this  
17 map from this distance but it looks to me as if some of these  
18 properties that face on Connecticut Avenue, which are the green  
19 houses marked there, would not have any access to the alley at  
20 all if the stub weren't there.

21 COMMISSIONER FRANKLIN: Oh, I see. I see what  
22 you're saying. Yes.

23 MS. HOLMES: See how the land comes along there?

24 COMMISSIONER FRANKLIN: Okay. It was sort of  
25 necessary to provide them access it appears.



1 COMMISSIONER FRANKLIN: Thank you very much.

2 MS. MITTEN: Any other questions?

3 VICE CHAIRPERSON HOOD: Madam Chair, I had a  
4 question I wanted to ask Ms. Murphy. We have some pictures.

5 Ms. McCarthy, I think those are in front of you.  
6 Thank you.

7 Ms. Murphy, you may have mentioned this in your  
8 testimony and I may have missed it. I was trying to understand  
9 the significance -- I was trying to see what your point was.

10 MS. MURPHY: Right. It's not the cat. Actually,  
11 that would be --

12 VICE CHAIRPERSON HOOD: I figured that much out.

13 MS. MURPHY: That was the view of the second story  
14 window. Those were the trees that were bordering the property.

15 VICE CHAIRPERSON HOOD: Okay. This was the view  
16 that you used to have?

17 MS. MURPHY: Yes.

18 MS. HOLMES: And if I could just clarify. Because  
19 an R-5-D zoning doesn't have the same set backs it, of course,  
20 allows a much higher building. The windows in the neighboring  
21 property are going to be obscured and her access to light above  
22 will also be eliminated.

23 VICE CHAIRPERSON HOOD: And also this one here.

24 MS. MURPHY: Right. That is on the roof deck and  
25 those were the trees that bordered the property. They were

1 behind the roof.

2 VICE CHAIRPERSON HOOD: Those were the trees?

3 MS. MURPHY: Those were the trees, yes. And then  
4 if you'll notice, there's another picture showing the same roof  
5 deck without the trees.

6 VICE CHAIRPERSON HOOD: Okay. Thank you.

7 MS. MURPHY: Sure.

8 COMMISSIONER PARSONS: Ms. Holmes, Mr. Bishop, the  
9 last communication I think we have from you other than tonight  
10 is March 14th. In that letter you come to the conclusion that  
11 the zoning here could be R-5-A, R-4, R-3. I guess you know  
12 that paragraph. Right?

13 On March 19th we received a report from Mr. Altman  
14 which you obviously haven't have a chance, at least  
15 organizationally, to respond to, I'm sure.

16 MS. HOLMES: Correct.

17 COMMISSIONER PARSONS: Are you familiar with it?

18 MS. HOLMES: Yes.

19 COMMISSIONER PARSONS: Of course, it hasn't been  
20 presented to us yet tonight so I'm getting ahead of the curve  
21 but is there anyway you could characterize whether your  
22 organization might -- I shouldn't call you an organization --  
23 the ANC might respond positively to what's in this report?

24 MS. HOLMES: I have seen the report. Of course, I  
25 can't speak for the ANC on an issue that the ANC hasn't

1 considered. The report is in most respects generally  
2 consistent with our recommendation. As I understand it, there  
3 is actually going to be an amendment to the March 19th report  
4 presented. Even with the amendment there will be some  
5 inconsistencies, although it is generally quite similar to our  
6 recommendations.

7 It's my own personal view as the single member ANC  
8 Commissioner in whose jurisdiction all of this property is that  
9 the R-5-B zoning designation which is recommended in that  
10 report is not consistent with moderate density land use as  
11 defined in the comprehensive land use. It's close but it's not  
12 consistent.

13 COMMISSIONER PARSONS: Do you think procedurally  
14 that you would like the opportunity for the ANC to take up this  
15 matter at the next meeting and get back to us or how do you  
16 think it would be faster?

17 MS. HOLMES: Thank you for the opportunity to do  
18 that. We would ask that the record be held open. I understand  
19 that is a procedure that you follow because there are likely to  
20 be other issues raised by other who testify and we would  
21 appreciate the opportunity to testify in addition, or to  
22 provide additional information.

23 In addition, I heard the discussion earlier about  
24 the motion but I haven't had the curtesy of receiving a copy of  
25 it. There may as well be matters there that we would be able

1 to address in assisting your deliberations.

2 CHAIRPERSON MITTEN: Ms. Holmes, just to get a  
3 sense of timing, if we were to leave the record open, when  
4 would you have your next ANC meeting?

5 MS. HOLMES: The next ANC meeting is scheduled for  
6 Monday, April 9th, but I don't know what's on our agenda so I  
7 can't make a commitment that we would be able to address this  
8 but we would certainly make every effort to do so. That would  
9 be our earliest opportunity, however.

10 CHAIRPERSON MITTEN: So maybe between now and the  
11 conclusion of the hearing you could be thinking about that  
12 because if we're going to leave the record open, we're going to  
13 leave it open for a specified amount of time.

14 MS. HOLMES: Okay. Absolutely.

15 CHAIRPERSON MITTEN: Mr. Hood, did you have any  
16 more questions?

17 VICE CHAIRPERSON HOOD: I just had one question.

18 Mrs. Holmes, you referred to the zoning that you  
19 all would like to see it as -- no, I'm sorry. In the  
20 comprehensive plan it said moderate.

21 MS. HOLMES: Moderate density, yes.

22 VICE CHAIRPERSON HOOD: Right, moderate density.  
23 I'm trying to make sure I frame this question right because I  
24 know what kind of answer I'm looking for.

25 MS. HOLMES: Maybe I'll let you answer it, too.

1 VICE CHAIRPERSON HOOD: Okay. Let me answer it,  
2 too. No, I won't give an answer. In our zoning regulations R-  
3 5-B is suitable for moderate height and density.

4 MS. HOLMES: You mean R-5-B carries the designation  
5 moderate?

6 VICE CHAIRPERSON HOOD: For the sake of discussion  
7 I think you're requesting either R-3, R-4, R-5-A, R-5-B, and  
8 our regulations are suitable. In other words, it matches what  
9 the comprehensive plan is.

10 MS. HOLMES: Right. I looked at that myself and I  
11 haven't had a full opportunity to explore this but I think the  
12 similarity is that they both use the word moderate but I think  
13 they use it in different ways.

14 The term as used in the comprehensive land use plan  
15 describes moderate to mean predominate uses of row houses and  
16 garden apartments. If you look at the actual features of an R-  
17 5-B zoning designation, it includes up to 50-foot-high  
18 buildings which, of course, could be five story in height.  
19 That, to my mind, is inconsistent with garden style apartments,  
20 town houses, and row houses.

21 I think that although the use of the term moderate  
22 is similar, what's described in the comprehensive plan is  
23 moderate density land use category which is then described as  
24 particular forms of residential housing including low-density  
25 housing. If you then look at the zoning categories,

1 the only low-density housing categories are R-3, R-4, and R-5-  
2 A. And, of course, R-5-B is moderate which is the higher  
3 level.

4 VICE CHAIRPERSON HOOD: One of my concerns when I  
5 was looking through the materials was, again, in the OP report.

6 They refer to having minimal projects or places that exist now  
7 as being nonconforming.

8 My concern is, for example, hopefully this doesn't  
9 happen, something burns down and then the neighborhood may be  
10 faced with just blight, something sitting there as I was  
11 thinking through this, but I will yield and wait for the Office  
12 of Planning report.

13 MS. HOLMES: My understanding is there are only  
14 three structure in this entire stretch of 50 or 60 properties  
15 that would be nonconforming under even an R-5-A designation.

16 VICE CHAIRPERSON HOOD: Okay.

17 MS. HOLMES: I believe that's true.

18 VICE CHAIRPERSON HOOD: I would hope you see where  
19 I'm going because, for example, if you have a fire, I think our  
20 regulations state certain things and the community might wind  
21 up having just something sitting there and not be able to do  
22 anything with it.

23 MS. HOLMES: Well, we unfortunately have that  
24 experience right now.

25 VICE CHAIRPERSON HOOD: Oh, so you already

1 -- oh, okay.

2 MS. HOLMES: We do have one home that was burned  
3 and it hasn't yet been replaced, but certainly we wouldn't want  
4 to see a situation where a home that is currently a three-story  
5 home is replaced with a 10-story one. If it's going to be  
6 replaced, it should be replaced with a corresponding use.

7 If a zoning of a higher category is permitted in  
8 this area, of course, we'll be subject to anything being  
9 replaced with a much larger structure, higher structure, more  
10 dense, higher land use structure.

11 VICE CHAIRPERSON HOOD: Have you had a chance to --  
12 well, I guess we did ask this question and it wasn't answered.  
13 Have you had a chance to look at the March 29 report that was  
14 just submitted that I just received?

15 CHAIRPERSON MITTEN: You mean by the Office of  
16 Planning.

17 VICE CHAIRPERSON HOOD: Office of Planning. Right.

18 MS. HOLMES: No, I have not.

19 VICE CHAIRPERSON HOOD: Okay. We'll wait. Thank  
20 you.

21 COMMISSIONER FRANKLIN: Ms. Holmes, if I could just  
22 ask you one brief question. What is your concept of a garden  
23 apartment? How do you interpret the words garden apartment?

24 MS. HOLMES: Low rise. Low rise with --

25 COMMISSIONER FRANKLIN: And how do you interpret

1 low rise?

2 MS. HOLMES: Three stories.

3 COMMISSIONER FRANKLIN: Three stories? Okay.

4 MS. HOLMES: That's, again, my personal view. I'm  
5 not speaking for the Commission.

6 CHAIRPERSON MITTEN: Any other questions?

7 Thank you very much for your presentation.

8 MS. HOLMES: Thank you for your attention.

9 CHAIRPERSON MITTEN: Before we move to the report  
10 by the Office of Planning, I would just like to -- I know a lot  
11 of people have probably already seen it but there is a sign-up  
12 sheet in the back of the room by the door if you would like to  
13 testify and during the Office of Planning Report we will be  
14 bringing that up so that we can have some structure for the  
15 testimony by persons in support and opposition so if you  
16 haven't had a chance to sign up, maybe do that in the next few  
17 minutes and then we will collect that list.

18 I'll turn to the Office of Planning now.

19 MS. STEINGASSER: My name is Jennifer Steingasser  
20 and I'm with the Office of Planning. When the rezoning case  
21 was first presented to the Office of Planning, we were a bit  
22 skeptical as to the level of map amendments that we were  
23 willing to make.

24 As we began to research the project, we started  
25 with the Connecticut Avenue corridor study prepared for the



1 Zoning Commission back in the late '80s and presented in 1989.

2 Granted, it was just a study and not an adopted plan. It did  
3 provide a great deal of background information as to how the  
4 community, the council, and the Zoning Commission at that time  
5 viewed Connecticut Avenue and how it had historically grown  
6 through the city and up to the Maryland line.

7 The most salient phrase we found was on page 46 of  
8 the study which made reference to the western frontage of this  
9 very area and its designation in the general land use plan for  
10 moderate density residential. It identified that same  
11 residential classification as row houses and garden apartments,  
12 prominent use, and they also include low density residential as  
13 it is today.

14 The same paragraph went on to say that the subject  
15 location, the council specifically amended the land use map  
16 from high density to moderate density in order to reflect the  
17 scale and type of existing development, lessen the pressures  
18 for redevelopment of the recently constructed town houses on  
19 the west side, and ensure that any in-field development or  
20 redevelopment is generally on scale with the existing  
21 predominate development patterns.

22 That hit home very closely. We then went out and  
23 did a great deal of field work viewing the sites, walking the  
24 alleys, looking at the existing land use patterns in that area,  
25 and the density and specifically the height of things.

1           As we work through the alley systems, we realized  
2           that the land use characteristics were very different up at  
3           this end of Connecticut Avenue. The lots were narrower in  
4           shape. They were shallower in some areas. The alleys were not  
5           connected in all areas. There was some odd dog-legged alleys  
6           as you see here that provided sole access to the rear of some  
7           of the residential properties.

8           In many cases, there may be some inconsistencies  
9           between the type of development that could happen under an R-5-  
10          D and the existing R-2s and R-1-Bs that abutted these  
11          properties from the east and west.

12          We went through all the basic real estate records  
13          on the properties and got some basic information on what types  
14          of structures existed on the sites, their current density,  
15          their current heights, heights being estimated from the tax  
16          records based on the fact that most of these properties are too  
17          old to be in the city's archives for building permits.

18          Again, we went out looking at the alleys and how  
19          these properties related in their current context and what  
20          could be developed on the site.

21          As we walked through the different blocks, we  
22          looked at them individually taking the first block from  
23          Nebraska to Chevy Chase Parkway being the 5100 block of  
24          Connecticut Avenue and realized it is currently developed with  
25          two story row houses.

1 Many have been converted to multiple units. There  
2 is the one four-story small apartment building in its in the  
3 mid block and this area served by the U-shaped alley that is  
4 presented up here currently. This alley is no more than 15  
5 feet wide.

6 In many areas it's further constrained by existing  
7 utility poles that are sitting right on the alley or leaning  
8 into the alley.

9 We moved up to the second block being between Chevy  
10 Chase Parkway and Jennifer Street and this was the 5200 block  
11 of Connecticut Avenue. The southern half of the block, 60  
12 percent of the block, has two existing high-rise buildings on  
13 it.

14 The Regency House at 5201 and the Huntington  
15 Apartments at 5225. They are adjacent to a two and three-story  
16 condominium project to their north called Christopher Mews and  
17 the remainder of the block is developed with row houses of  
18 various densities and lot occupancies.

19 This area, though it had high density, high-rise  
20 buildings had considerably larger lot depths. It had a much  
21 more extensive alley system that had three points of access.  
22 The parking lot was designed into the alley system so that  
23 there is a great deal of separation between the high rises and  
24 the adjacent lower-density single-family detached and semi-  
25 detached units.

1           This alley system created a triangular inset that  
2 provided a lot of movement that reduced conflicts between the  
3 types of uses that were going on in that area.

4           Moving up to the third block between Jennifer and  
5 Jocelyn Street, the 5300 block, it is also currently developed  
6 in a semi-detached row house one being used currently as a  
7 daycare.

8           The block is also served by a through system that  
9 has three points of access onto Jocelyn, Jennifer, and over to  
10 Chevy Chase Parkway.

11           We considered these types of situations that were  
12 unique to each block and then looked at the area as a whole.  
13 We then moved to the surrounding neighborhoods and the adjacent  
14 neighborhoods were predominately low-density residential and  
15 mostly zoned R-2 and R-1-B.

16           To the north along Connecticut Avenue there is  
17 more R-5-D which extends up to Livingston Street. Beyond  
18 Livingston there's the C-1 zone. Then south of Nebraska, of  
19 course, is also the neighborhood commercial strip of C-1 zoning  
20 which created a lower height.

21           After performing this kind of field work, we then  
22 looked at the existing zoning and the proposed zoning and all  
23 the zonings in between. We looked at the maximum height  
24 between the lower R-3 which was requested by the ANC which had  
25 a 40-foot height.

1           We looked at the options in the moderate  
2 designation by zoning which were the R-5-B and the R-4 possibly  
3 which provided, again, a 40 to a 50-foot height. Then we  
4 looked also at the R-5-C, R-5-Ds which went between 60 and 90  
5 high.

6           We looked at the lot occupancy which is the percent  
7 of the lot that is covered by structure and compared that  
8 between the zones and what was currently on the lot and what  
9 could be projected.

10          We looked at the available floor area ratio and did  
11 a rough calculation of the rear and side yards. Again, some of  
12 our figures were estimates. We were working off some very old  
13 maps, especially regarding the rear and side yards.

14          We also looked at the matter of lot uses and the  
15 special exception uses that were printed in these zones not  
16 wanting to necessarily affect any of the potential land use  
17 that could be associated but focusing more on the bulk, height,  
18 and massing issue and how that would affect the neighborhood.  
19 We felt that the land uses were fairly compatible within the  
20 residential context and the special exception uses that were  
21 provided.

22          Then we took this information and started scouring  
23 the comprehensive plan and we found many repeated references to  
24 the need and obligation for consistency between the  
25 comprehensive plan and the zoning.

1           Section 5-414 of the D.C. Code requires that zoning  
2 maps and regulations and amendments thereto shall not be  
3 inconsistent with the comprehensive plan. We kept that in mind  
4 as we looked through the other sections of the comprehensive  
5 plan.

6           We went through the various sections of the plan  
7 including the urban design element which emphasizes the need to  
8 emphasize neighborhood identity and provide new structures that  
9 also emphasize neighborhood identity while functionally  
10 efficient. They encourage building massing and scale and new  
11 development to be sensitive to establish patterns.

12           We found references to stabilizing characters of  
13 neighborhoods by protecting them through new development and  
14 renovation adjacent to areas that are stable which are also  
15 compatible in scale and character.

16           We found references to encouraging in-field  
17 developments and that they be complimentary to the established  
18 character of the existing neighborhoods.

19           Under the land use areas we found statements about  
20 conservation and maintenance of established neighborhoods  
21 through strict application of zoning, housing, and building  
22 codes, and the generally accepted level of existing densities  
23 and height.

24           Moving to the Ward 3 plan in the comprehensive  
25 plan, we found even more references to the overall desires of

1 Ward 3 and the adoption by the city council to maintaining land  
2 use designations to protecting the existing low-scale density  
3 and character of Ward 3, and to relating design elements to  
4 these neighborhoods.

5 There are references, again, through land use,  
6 urban design elements, urban design economic development, and  
7 just major themes of the ward, several of which reflected  
8 directly to existing neighborhoods being compatible with  
9 adjacent height, scale, massing, and bulk.

10 In particular, the land use policies of Section  
11 1409.2 of the Ward 3 plan specify that one of their land use  
12 policies is to eliminate existing and potential conflicts  
13 between land use and transportation facilities and correct or  
14 prevent inconsistencies between zoning and land use  
15 designations of the comprehensive plan.

16 Taking all that into account and visiting the site  
17 one last time, it became apparent that an R-5-D was, indeed,  
18 inconsistent with the comprehensive plan and we then set about  
19 trying to find the appropriate map amendment that would bring  
20 this area into consistencies and not be inconsistent as  
21 required by the D.C. Code.

22 We worked through various scenarios originally  
23 trying to acknowledge these two existing high-rise buildings  
24 and not increase the nonconformities which is also an  
25 objective. That was our original proposal. Taking the area in

1 three blocks from Nebraska to Chevy Chase we suggested an R-5-B  
2 which would give a 50-foot height gives a 1.8 FAR and we felt  
3 by zoning definition that is a moderate density. We felt that  
4 was not inconsistent with the comprehensive plan, and it  
5 recognized the fact that Connecticut Avenue and Nebraska Avenue  
6 were, indeed, major arterial roads and that density is usually  
7 recognized as appropriate along those type of corridors.

8 Moving north between Chevy Case and Jennifer, the  
9 larger part, we recognized that this area was somewhat  
10 different. It did have the larger deeper lots. It had the  
11 most extensive alley. It had the parking integrated in as a  
12 separation of land uses and we're trying to recognize that they  
13 existed.

14 We thought if we look at these as a comprehensive  
15 unit of three blocks, perhaps we can leave these at their  
16 current R-5-D zoning. As they are now, they are already  
17 nonconforming under the R-5-D and we didn't want to increase  
18 that necessarily.

19 Looking north from that point on, we went through  
20 the Christopher Mews and the existing row houses and attached  
21 units and felt that R-4 was a consistent zone there. It  
22 provided a little bit more density than the R-3 recognizing  
23 that we wanted to recommend that. That was our original  
24 recommendation.

25 After we worked through it again and reconsidered



1 the obligation of that consistency requirement in the D.C. home  
2 rule, we have since revised our recommendation and would  
3 recommend that the Regency House at 5201 and Huntington at 5225  
4 also be zoned R-5-B so that the overall three blocks regardless  
5 of whether they are looked at as a unit or as separate blocks  
6 would all three individually be consistent with the  
7 comprehensive plan.

8 Our final recommendation is that the squares 1989,  
9 lots 44 through 57, which are Nebraska to Chevy Chase, be  
10 amended to reflect the R-5-B zoning designation, that lot 68  
11 and 801 of square 1874, which were the two addresses I just  
12 mentioned, also be amended to reflect the R-5-B zone district.

13 And that the remaining lots be amended to reflect the R-4 low  
14 to moderate zoning designation.

15 MR. ALTMAN: I just have a brief concluding remark  
16 to sort of put some of this in context. The issue, I think,  
17 before us, as you said, Chairman, is not about a specific  
18 project. It's not about the complications of a specific  
19 project whether that's for a project or against a project.

20 The question here really is one of a clear issue of  
21 principle and to whether we were going to be consistent with  
22 the comprehensive plan. Our mandate in the Office of Planning,  
23 what we're bringing to you, is to ensure that the comprehensive  
24 plan accomplishes its legislative mandate as recognized in D.C.  
25 law which is very clear.

1           It says, and I quote, "The purposes of the District  
2 elements of the comprehensive plan for the national capitol are  
3 to guide executive and legislative decisions and to guide  
4 private and public development in order to achieve district and  
5 community goals."

6           It furthermore states that, "Zoning maps and  
7 regulations shall not be inconsistent with the comprehensive  
8 plan." We took that as sort of the basic guideline for this  
9 for what is before you today. For a long time we've known that  
10 one of the issues has been adherence to the comprehensive plan.

11          I certainly hear that throughout the city as being a  
12 significant issue for communities.

13           In this case we looked and both the map and the  
14 text, as you've heard in our report, showed us that there was a  
15 clear inconsistency here between the comprehensive plan and  
16 current zoning regulations and that, therefore, those needed to  
17 be made consistent.

18           That's why I think the issue here is not simply one  
19 of is it a down zoning or not. The real question here is one  
20 of consistency and principle. I think that is the issue we are  
21 really bringing before you today.

22           When we looked and saw what Jennifer pointed out as  
23 we went through and analyzed this case is how do we, on the one  
24 hand, recognize that, yes, it is a corridor, but that even  
25 though it is a corridor, it is very clear that the comp. plan

1 guidance on this for low and moderate density and the  
2 particular circumstances of why this comprehensive plan  
3 amendment for these blocks was proposed advocated and adopted  
4 by the city council.

5 So our obligation was very clear which is to  
6 support the ANC's position for consistency so that it will now  
7 be consistent. I think that really to very clearly look at the  
8 question of this is one of how interpretation of the  
9 comprehensive plan and adherence to the comprehensive plan,  
10 which we believe is very important and important to overall  
11 planning in the city and, therefore, we reached the  
12 recommendation before you and, as Jennifer said in our amended  
13 recommendation, because we felt that it was important to be  
14 consistent across the board.

15 Therefore, we looked at those two parcels where  
16 even though we wanted to limit nonconforming properties, I  
17 think there, as was pointed out, only two or three -- I don't  
18 remember the number -- of nonconforming properties and,  
19 therefore, the issue of consistency became paramount to us and  
20 that's why the recommendation before you in support of it.

21 CHAIRPERSON MITTEN: Thank you. Any questions for  
22 the Office of Planning?

23 VICE CHAIRPERSON HOOD: I just had a question for  
24 Mr. Altman.

25 Mr. Altman, I know that this community obviously in

1 the way they presented the case tonight actually knew the  
2 issues with the comp. plan and the zoning regulations and down  
3 zone. Obviously, this is just throughout the city and other  
4 places, I believe. I'm just going out on a limb with this.

5 Is the Office of Planning working through the new  
6 planning coordinators and working with other communities who  
7 may not be as well versed in these kinds of issues where the  
8 neighborhood at some point is slowly but surely getting gobbled  
9 up?

10 MR. ALTMAN: One of the -- that's why this was an  
11 important point to us because as part of the neighborhood  
12 planning initiative, one of the things we are doing is starting  
13 out in the premise of the comprehensive plan in the city and  
14 using that and both educating people about what that is if they  
15 don't know.

16 Many communities have spent a lot of time and  
17 labored on the comprehensive plan so they, in fact, are  
18 educating us about it. Some places we are using that as a  
19 basis and distributing that to people. There is a comp. plan  
20 amendment cycle that will be soon before us within the next  
21 year where we need to examine is the comp. plan still current.

22  
23 Are there issues where there need to be amendments,  
24 and preparing people for that process as we take a fresh look  
25 at it. Until such time, we felt that you have to look at what

1 the existing comprehensive plan language is and take that as  
2 the overall guidance for land use decisions in the city.

3 VICE CHAIRPERSON HOOD: Thank you.

4 MS. MCCARTHY: Plus, Mr. Hood, I think we should  
5 also add that there is an interesting sequence of events with  
6 regard to the zoning in this area because the comp. plan was  
7 adopted in 1984.

8 In 1986 the rezoning request was brought to zone  
9 the west side of Connecticut Avenue in this area R-3 to be  
10 consistent with the designation in the comprehensive plan and  
11 that is the Connecticut Avenue corridor study which you have  
12 before you.

13 In that case, the Office of Planning, having two  
14 different cases initiated, said, "Let's do an analysis of the  
15 entire length of Connecticut Avenue and let's eliminate any  
16 inconsistencies between the comprehensive plan and the zoning  
17 on the site." That was why the west side was down zoned. At  
18 the time the land use designation on the east side of  
19 Connecticut Avenue was a higher density designation.

20 It was then in response to that that the citizens  
21 went back to the council and asked them at a subsequent comp.  
22 plan amendment cycle to change the land use designation on the  
23 east side to make that a lower density.

24 Because there had already been that comprehensive  
25 rezoning of Connecticut Avenue and that had been such a massive

1 effort on the part of the Office of Planning, we never did  
2 revisit that area. We generally do try to look for  
3 consistency and, in fact, subsequent to the 1989 amendments,  
4 the Office of Planning did do a fairly extensive zoning  
5 consistency effort.

6 As you know, we are about to embark on a zoning  
7 consistency effort in conjunction with the amendments that were  
8 made on December 28th, I think, of 1998. We have been studying  
9 those amendments and looking and prioritizing which ones to  
10 begin with.

11 As you know, we've already begun with some like the  
12 campus plan amendments. But certainly we try to be really  
13 conscious of the need to examine that zoning to make sure that  
14 it is consistent but it is something that -- it's a big city  
15 and there's lots of complicated zoning so we're doing the best  
16 we can to try to keep it up to date.

17 MR. ALTMAN: I would just add that in many cases  
18 the comprehensive plan has difference guidance. When we  
19 evaluated the petition before us, this seemed very clear. I  
20 mean, the map was very clear. The studies leading to it were  
21 very clear. There was a lot of, you know, thought and land use  
22 analysis behind it that led to this.

23 VICE CHAIRPERSON HOOD: Thank you.

24 CHAIRPERSON MITTEN: Mr. Franklin.

25 COMMISSIONER FRANKLIN: What in OP's view is the

1 meaning of the phrase garden apartments?

2 MS. STEINGASSER: In my view, Mr. Franklin, it  
3 would be a low-rise, low-density apartment, what you might  
4 refer to also as a walk-up, maybe three to four floors.

5 COMMISSIONER FRANKLIN: But the R-5-B zone permits  
6 buildings at a height of 50 feet. Is that correct?

7 MS. STEINGASSER: Yes, sir.

8 COMMISSIONER FRANKLIN: In your view, how many  
9 floors would that imply?

10 MS. STEINGASSER: It could be anywhere between four  
11 to five.

12 COMMISSIONER FRANKLIN: Is that in your view?

13 MS. STEINGASSER: Not counting the pitch of the  
14 roof.

15 COMMISSIONER FRANKLIN: Okay. In common parlance  
16 that would be considered a garden apartment?

17 MS. STEINGASSER: I believe so. Yes, sir.

18 MS. MCCARTHY: The upper limits of garden  
19 apartments.

20 COMMISSIONER FRANKLIN: The upper limit. Right.

21 MS. MCCARTHY: Sort of the sun flower garden  
22 apartment.

23 COMMISSIONER FRANKLIN: Perhaps when the  
24 comprehensive plan gets reviewed, the terminology can be made a  
25 little bit more specific.

1 MS. MCCARTHY: It makes sense because garden  
2 apartments is typically -- that phrase is typically thought of  
3 more as a suburban housing type.

4 COMMISSIONER FRANKLIN: That's what I was going to  
5 say. It's a suburban phrase. But there are gardens in the  
6 city, too, I guess.

7 What we've heard tonight strikes me in terms of the  
8 transportation situation in the alley as totally unacceptable  
9 under current conditions. Has the Department of Transportation  
10 ever, to your knowledge, looked at this situation?

11 Let me ask you this just from the basis of your  
12 general knowledge. Is there some regulatory approach to trying  
13 to give these people some relief from what is really a very  
14 unacceptable condition in the alley. It seems to me that that  
15 condition is going to be exacerbated by whatever is developed  
16 in the green lots. It's a very anomalous condition.

17 MS. MCCARTHY: It is very anomalous. With the  
18 parking restrictions on Nebraska Avenue and Connecticut, it  
19 makes people in the 5100 block and in that entire square  
20 extremely dependent on that alley because the utility pole is  
21 no more than 14 feet at the northern entry.

22 It's closer to 11 feet at the southern point in the  
23 most narrow sections. We did bring it to the attention of the  
24 Department of Public Works. We recommended for the project  
25 that was contemplated there that at least the utility pole be



1 moved and that any loading or dumpsters be pushed into the  
2 building or as far back as possible from the alley.

3 COMMISSIONER FRANKLIN: Do you have an opinion as  
4 to whether the alley that is now a stub were to be extended to  
5 Chevy Chase Parkway, that would provide some escape valve, so  
6 to speak?

7 MS. MCCARTHY: Yes, we thought that we recommended  
8 that be done because having gone to this vicinity at rush hour,  
9 the traffic that's going west bound on Nebraska, first of all,  
10 it's coming up a fairly steep slope to get up to Connecticut  
11 where the sight lines aren't great in terms of feeling  
12 confident of clearing the intersection.

13 Just with the volume of traffic, the traffic  
14 especially at rush hour is frequently backed up down Nebraska  
15 Avenue east of Connecticut. It means that coming out of the  
16 north part of that alley is very difficult.

17 Certainly, virtually impossible to go left and turn  
18 right when you've got cars stacked up back from the  
19 intersection is also extremely difficult. Having the ability  
20 to get out onto Chevy Chase Parkway we though would at least  
21 ameliorate the situation somewhat and provide some other  
22 alternatives.

23 MR. ALTMAN: The only thing I want to say is we  
24 clearly looked at the -- well, let me take a different view.  
25 Even if you were to correct the alley situation, it is still,

1 from our perspective, it doesn't change the fact of what really  
2 the principal issue was of the consistency with the  
3 comprehensive plan.

4 Even if one were to make the change to the alley,  
5 which I'm not suggesting you shouldn't in terms of relief to  
6 the neighborhood and what the clear impact is in terms of  
7 access and what density could do with respect to congestion,  
8 that still wouldn't change the fact that the comprehensive plan  
9 gave such a clear interpretation.

10 COMMISSIONER FRANKLIN: I don't mean to imply  
11 otherwise, Mr. Altman. Certainly extending the alley wouldn't  
12 obviate the need to be consistent. I can see there's a problem  
13 even if you extended the alley with people making a right turn  
14 out of Chevy Chase Parkway from Connecticut and they tend to be  
15 going at a fairly rapid pace. They would suddenly come upon  
16 you as you were exiting the alley and that, in itself, would be  
17 somewhat problematic. Thank you.

18 CHAIRPERSON MITTEN: Mr. Parson?

19 COMMISSIONER PARSONS: No, thank you.

20 CHAIRPERSON MITTEN: Okay. I just had a few  
21 questions. In the set-down report from the Office of Planning,  
22 it was indicated that there would be referrals made to Public  
23 Works, fire and emergency, medical services, metropolitan  
24 police, and DHCD. Were those referrals made and was there any  
25 response?

1 MS. STEINGASSER: They were made and there was no  
2 response. We doubled checked with the Department of Public  
3 Works because of the transportation system and their statement  
4 was that it was a down zoning. It was a proposal to reduce the  
5 density and, therefore, they didn't anticipate having any  
6 objection to it. They haven't provided anything in writing.

7 CHAIRPERSON MITTEN: All right. And could you  
8 state for the record why nonconforming uses are undesirable?

9 MS. MCCARTHY: In general when you are doing a  
10 rezoning, if there are no other factors like an inconsistency  
11 with the comprehensive plan -- I mean, always when you're  
12 looking at a map amendment you look to make the -- you look at  
13 the character of the area surrounding it and you look at comp.  
14 plan guidance. All other things being equal, if those  
15 issues can be dealt with in the proposed rezoning, then you  
16 look to -- as part of your overall calculation you look to see  
17 what uses will be made nonconforming.

18 If those uses were conforming under the existing  
19 zoning, or if they were built as matter-of-right uses at the  
20 time, then nonconformity does place certain restrictions on  
21 those buildings in terms of if they were to burn to the ground  
22 and reconstruction is more than 75 percent of the value of the  
23 structure, they are limited in their ability to be -- they  
24 cannot be rebuilt to the previous density. They have to be  
25 rebuilt only to conform with the zoning that is in place then.

1           Given that, that represents a potential hardship  
2 to the owner, you try to minimize the nonconformity if that's  
3 possible. That is one consideration but the overriding  
4 consideration is what kind of guidance have you received from  
5 the comprehensive plan and what is the impact of any proposed  
6 rezoning on the character of the neighborhood that will be  
7 affected and the character of the neighborhood immediately  
8 adjacent.

9           CHAIRPERSON MITTEN: Thank you. I want you to  
10 answer this question first without taking into consideration  
11 nonconforming uses that will be created.

12           I understood Ms. Steingasser to say that the block  
13 between -- let me get my map out -- the block between Chevy  
14 Chase Parkway and Jennifer Street has better service from the  
15 alley system because of the access points and the depth of the  
16 land that is fronting on Connecticut Avenue is greater than,  
17 say, the block to the south in square 1989.

18           I'm asking this as sort of a relative question from  
19 square 1874 and specifically lots 61 and 801 and then the block  
20 to the south in square 1989.

21           It seems to me those lots could bear a higher --  
22 relatively speaking they could bear a higher density within the  
23 moderate range than could the lots in square 1989. It seems to  
24 me that some distinction is warranted based on what Ms.  
25 Steingasser described. I was wondering why there is not a

1 distinction being made now.

2 MS. McCARTHY: As you know, we made that  
3 distinction initially in our report. The access issues are  
4 definitely better here because you can see the triangle at this  
5 point. That is basically a small -- such a small triangle of  
6 alleys behind there that it pretty precludes any development on  
7 that triangle so that it creates -- that helps create the  
8 buffer between that and the lower density houses behind the  
9 apartment buildings.

10 The apartment buildings as they are currently  
11 structured have surface parking in the rear that also helps  
12 create a buffer in the back of those buildings.

13 Our initial inclination was you've got much better  
14 circulation access. You've got somewhat deeper lots --  
15 somewhat deeper lots. With the way that the apartment  
16 buildings are structured, you've got a better buffer because of  
17 the lot, the lot occupancy, and where the parking is.

18 When issues were raised about the consistency of  
19 carving that out and we began to look at those issues and look  
20 at the comprehensive plan guidance and try to figure out, well,  
21 nonconformity is something that you want to avoid but the comp.  
22 plan is the comp. plan and the law says you can't be  
23 inconsistent.

24 We also realized they are not great buildings.  
25 They were not expensively constructed. They may be nearing

1 their useful life or maybe within the next 10 years or 15 years  
2 reaching the end of their useful life.

3 Were we to leave those R-5-D, there was no  
4 guarantee that when they were reconstructed, they would be  
5 reconstructed with surface parking in the rear with the kind of  
6 setbacks that the alleys might not be closed.

7 There would be the same sort of natural buffering  
8 that is provided -- not natural but the same sort of buffering  
9 that exist there now may not be replicated were those buildings  
10 to be redone.

11 The more that we thought of it, it made sense to  
12 obey the overall guidance of not being inconsistent with the  
13 comp. plan and to recognize that the present situation may not  
14 be replicated if they were rebuilt or if additions were made to  
15 them and, therefore, we ought to include them in the R-5-B  
16 category as well.

17 CHAIRPERSON MITTEN: And I understand all that. I  
18 guess I'll just be more direct about what I'm driving at which  
19 is why not R-4 in square 1989 given that seems to have -- I  
20 mean, if you are recommending on lot 61 and 801 in 1974 if  
21 you're recommending R-5-B and you have R-4 to the north -- you  
22 are recommending R-4 to the north because that is constrained  
23 in a similar way to square 1989, then why not R-4 down there?  
24 Maybe I missed something in Ms. Steingasser's presentation but  
25 if you could clarify that for me.

1 MS. STEINGASSER: At this corner we recognized that  
2 Nebraska and Connecticut Avenue was an intersection of major  
3 arterials and that commonly has a slightly higher density. It  
4 provided a transition from the commercial development on the  
5 south of height that kind of worked up and maintained a little  
6 bit of the flow of Connecticut Avenue. We felt that was a  
7 prominent corner that a little higher density could be  
8 sustained.

9 MS. MCCARTHY: Right. But we didn't feel -- we  
10 don't feel strongly that needs to be R-5-B. We were trying to  
11 accommodate the fact that those were two fairly major  
12 arterials. But we were conscious of the fact that because of  
13 the circulation in that alley and the situation with that block  
14 therefore being so much worse than any of the other blocks,  
15 that a good argument could be made for R-4 as well.

16 CHAIRPERSON MITTEN: Perhaps you could -- there's  
17 probably some photographs or something but the C-1 that is  
18 south of Nebraska Avenue has a 40-foot height limit and I don't  
19 know if there are existing buildings that exceed that but I  
20 suppose there may be taller buildings on the west side of  
21 Connecticut Avenue between Nebraska and Harrison, I think it  
22 is. I'm just curious about --

23 AUDIENCE MEMBER: It's directly across the street  
24 at 5101.

25 CHAIRPERSON MITTEN: Okay. We're not going to take

1 any comments from the audience.

2 MS. MCCARTHY: Between Nebraska and Chevy Chase  
3 Parkway. On the west side between Nebraska and Chevy Chase  
4 Parkway.

5 CHAIRPERSON MITTEN: Yes, that's where it is.  
6 Thanks.

7 MS. MCCARTHY: There are taller apartment  
8 buildings, yes. That's right. That was another thing that we  
9 had looked at, that there was R-5-D -- it is R-5-D across the  
10 street and there were R-5-D type apartment buildings located  
11 immediately across the street from that square.

12 CHAIRPERSON MITTEN: So just to repeat what I  
13 thought I heard you say a minute ago, which is you're not  
14 unfavorably disposed to R-5 in square 1989?

15 MS. MCCARTHY: Right. R-4 would be more responsive  
16 to the constrained transportation situation in that square. R-  
17 5-B was more responsive to the nature of the arterials  
18 surrounding there. I think one could make a case for either of  
19 those zoning designations.

20 COMMISSIONER FRANKLIN: Conundrum is the language  
21 in the comp. plan which calls for moderate density. R-4 is  
22 generally low density.

23 CHAIRPERSON MITTEN: Although we have a range of --

24 COMMISSIONER FRANKLIN: There is a range. Right.

25 CHAIRPERSON MITTEN: I think we have a range



1 because as we well know, the comprehensive plan does not  
2 dictate the zoning. We well know that.

3 COMMISSIONER FRANKLIN: The specific site zoning.

4 CHAIRPERSON MITTEN: Yes. Any other questions for  
5 the Office of Planning? Thank you very much.

6 I'm going to call folks up in panels of three to  
7 the extent that that works with my list here. I will call for  
8 persons in support first. April Wimes, Mr. Seremetis, Patrick  
9 Grogan. I have a G. Seremetis.

10 If I call your name and you don't wish to testify  
11 and you just signed in, then just ignore me and don't come  
12 forward. Now we'll see if we can get John Gill to come forward  
13 if he wants to testify. John Gill. There we go.

14 Each of you will testify and then after all three  
15 have gone, then we'll ask for questions from the Commissioners  
16 if you don't mind.

17 Ms. Wimes. You need to turn on the microphone.

18 MS. WIMES: April Wimes. I recently moved from  
19 5113 Connecticut Avenue which is scheduled to be demolished.  
20 Up to six of us lived in the house and we were forced to vacate  
21 and it was disruptive to my life.

22 It was affordable housing so I'm in support of R-3  
23 or R-4, the lowest density possible. The house I rented a room  
24 from was very affordable. It wasn't the most beautiful house  
25 but it was a home. That's all I want to say.

1 CHAIRPERSON MITTEN: Thank you. If you could just  
2 hold your seat until we take questions.

3 Mr. Grogan.

4 MR. GROGAN: My name is Patrick Grogan. I'm a  
5 dentist at the corner of Connecticut and Nebraska Avenues.

6 Being both a business and property owner which  
7 would be adversely affected by the over development of square  
8 1989, I've come to speak on behalf of the down zoning.

9 I purchased my property on the 5,000 block of  
10 Connecticut Avenue because of restrictive covenants which were  
11 in effect on the 5100 block. I have both lived and worked on  
12 both sides of Nebraska Avenue.

13 Basically, it's my opinion that the 5100 block has  
14 not been developed previously because of these restrictive  
15 covenants that were placed on it by Chevy Chase Land Company in  
16 1925.

17 Covenants usually, from what I understand, are  
18 placed on properties in an act of reciprocity. That is, Chevy  
19 Chase Land Company got to develop another parcel in exchange  
20 for keeping square 1989 being single family homes.

21 The down zoning would be consistent with the  
22 existing covenants which limit this property to residential use  
23 only without any commercial use available.

24 The existing R-5-D zoning has basically fostered a  
25 continual disrepair of this block, while at the same time

1 enticing a procession of developers to come in and try to  
2 develop it. The R-5-D zoning has, in essence, been the carrot  
3 on the stick.

4 The down zoning would bring both the incentive for  
5 the restoration of this block and act as a barrier to further  
6 attempts of the misuse of this land. Likewise, the down zoning  
7 would keep the citizens from having to civilly enforce the  
8 covenants.

9 It is time that the zoning be made consistent with  
10 the covenants. Until then the burden of keeping the commercial  
11 developments out will be unduly placed on the citizens who will  
12 have to civilly defend the covenants placed on the land back in  
13 1925.

14 CHAIRPERSON MITTEN: You have another minute if you  
15 weren't ready to stop.

16 MR. GROGAN: That's okay. Thank you.

17 CHAIRPERSON MITTEN: It took me by surprise, too.

18 Mr. Gill.

19 MR. GILL: Good evening. My name is John W. Gill  
20 and I appear here in favor of case No. 0023P. I am the  
21 managing member of Con Ed LLC which owns property 5015  
22 Connecticut Avenue all the way through to 5031 Connecticut  
23 Avenue, N.W. Our property is located immediately south of the  
24 block which is under consideration for rezoning.

25 First, let me say that I am very interested in

1 zoning matters here in the District of Columbia. I am a former  
2 chairman of the Georgetown and Spring Valley Wesley Heights  
3 Citizens Association zoning committees. I know what good  
4 zoning can do for the city.

5 CHAIRPERSON MITTEN: Mr. Gill, I'm just going to  
6 interrupt you here and we're not going to penalize you on the  
7 time for the interruption but, with the help of Mr. Holman,  
8 took a look at the latter part of your testimony and I'm going  
9 to ask you not to make reference to any of your objections to  
10 the Sunrise Facility.

11 MR. GILL: All right. Sure. I'll be glad to.

12 When my son, Nicholas, and I purchased our property  
13 on Connecticut Avenue we took into consideration the fact that  
14 the parking in the area was good. Even though we have a large  
15 parking area in the rear of our stores, in the 10 or so years  
16 since we purchased the property, we have noticed a tremendous  
17 increase in cars on our lot and on the streets nearby.

18 This is already having a harmful effect on our  
19 merchants' business. If the new zoning goes into effect, it  
20 will only make the parking situation worse.

21 This is tough on me here. We heard that there were  
22 covenants on the lots to the north of our property when we  
23 bought our property and that is why the houses remained as they  
24 are.

25 We know of a case further up Connecticut Avenue

1 where someone demolished the houses and then wanted to build a  
2 new apartment building but was stopped because of a covenant so  
3 we felt safe and that our parking would remain plentiful which  
4 is so important to our merchants.

5 Our neighbors and the ANC are correct in asking the  
6 commission to down zone the Connecticut Avenue frontage of  
7 square 1989 from R-5-D to R-3 because it was wrong zoning in  
8 the first place. The idea of zoning a small sliver on this  
9 block to permit a gigantic building 90 feet tall with an FAR of  
10 3.5 is just a big mistake. We must correct the mistake now.

11 Because my office is in Georgetown, I am familiar  
12 with how an attractive row of town houses would look on this  
13 block. These houses would not depreciate the value of the rest  
14 of the houses on the block as would a contemplated building if  
15 the building were zoned under an R-5-D zoning.

16 You've cut me down to nothing here. Tonight we are  
17 asking you to rezone the Connecticut Avenue frontage of square  
18 1989 from R-5-D to R-3. This zoning will keep this part of  
19 Connecticut Avenue a pleasant upscale neighborhood and not turn  
20 it into a carron of high rises.

21 CHAIRPERSON MITTEN: Your time is up so I need you  
22 to just --

23 MR. GILL: Have I used it up?

24 CHAIRPERSON MITTEN: It goes fast.

25

1 MR. GILL: Okay. I would like to maybe clear one  
2 point, though. You were talking about the next block, the 5000  
3 block, and the question was were there any taller buildings in  
4 that block and there are not. Our zoning is C-1 which is 40  
5 feet high which is about as low as you can get for commercial.

6 In other words, the things we have on our property, which the  
7 question also came up, are all one story. That's all they are,  
8 just one story.

9 CHAIRPERSON MITTEN: Thank you.

10 MR. GILL: Very low density. It's an attractive  
11 neighborhood and, believe me, if it were rezoned R-4, and  
12 that's what I'm hearing, that would be a good answer.

13 CHAIRPERSON MITTEN: Thank you, Mr. Gill.

14 MR. GILL: Thank you very much.

15 CHAIRPERSON MITTEN: And now we might have a few  
16 questions from the Commission so if you will just take your  
17 seat for a minute.

18 Any questions for this panel?

19 I just want to make sure I understood, Mr. Grogan.  
20 I got handed something but I'm not sure who provided it to us.  
21 Are you saying that the property that is in square 1989 that  
22 is the subject of this rezoning request is subject to these  
23 restrictive covenants?

24 MR. GROGAN: That is correct.

25 MR. GILL: Oh, that was my information that I gave

1       you.

2                   CHAIRPERSON MITTEN:   Okay.   Thank you.

3                   I need you to put your mic. on, Mr. Grogan.

4                   MR. GROGAN:   Yes, that's correct.   I have a copy of  
5       the covenants here that basically says that it can never be  
6       used for any commercial purpose and that it has to be detached,  
7       semi-detached, or houses in groups of no more than three.

8                   CHAIRPERSON MITTEN:   Okay.   Thank you.

9                   MR. GILL:   And you have a copy of that.

10                  CHAIRPERSON MITTEN:   Thank you, Mr. Gill.   I think  
11       we're done.   Thank you very much.

12                  MS. MCCARTHY:   Madam Chair, could we just ask a  
13       clarifying question about that?   It refers to lot numbers that  
14       aren't the same as the ones that were listed on our based atlas  
15       which I assume means that they were re-subdivided later.   Is  
16       that the case?   Were these along Connecticut?

17                  MR. GILL:   Those were earlier lot numbers.

18                  MS. MCCARTHY:   But they were along Connecticut,  
19       that portion of it?

20                  MR. GROGAN:   The 24 through 29 designations were on  
21       the 1925 designations which came from the land records.   Later  
22       designations designate them 44 through -- I'm not sure, 58 or  
23       something.

24                  CHAIRPERSON MITTEN:   Mr. Gill, I'm going to ask  
25       that if you want us to have -- we're going to take this written

1 testimony and we're going to just set it aside but if you would  
2 like to correct it to remove those things that we prefer you  
3 not to speak about this evening, we'll take your written  
4 submission if you want to revise it. All right?

5 MR. GILL: I'll be glad to do that.

6 CHAIRPERSON MITTEN: Thank you. Thank you all very  
7 much.

8 Any other persons in support that maybe didn't make  
9 it onto our witness list? Are you in support? Sorry, I might  
10 have somehow missed you. Please come forward. Say your name  
11 for the record.

12 MS. KOVNER: My name is Karissa Kovner. I live at  
13 3711 Harrison Street with my husband. It's a little bit  
14 difficult to tell but Harrison Street actually is also the  
15 continuation of Chevy Chase Parkway on the map.

16 CHAIRPERSON MITTEN: I think we got it and you need  
17 to stay on the record so that we don't miss anything.

18 MS. KOVNER: Sorry.

19 CHAIRPERSON MITTEN: That's fine.

20 MS. KOVNER: It's basically Chevy Chase Parkway. I  
21 have discussed the ANC report with my neighbors. They are  
22 sorry they couldn't be here tonight. There are seven of us  
23 that are in the town houses from 3700 through 3713. Our town  
24 houses, I believe, are a garden town house. We are three  
25 stories but we do have access to a garden, each and every town



1 house.

2 Our concerns are three. One of them is the  
3 parking. Currently from 3700, which is the corner of  
4 Connecticut and Harrison Street, up through 3715 there's no  
5 parking in front of our town houses. We do have driveways.

6 However, if we have guests, they have to park on  
7 the other side of the street. The other side of the street  
8 currently is full by about 5:00 so if you want to come home if  
9 you happen to have two cars, it's actually quite difficult.  
10 When you have guests, there's no place to park.

11 Lots of that parking I have observed when I'm home  
12 during the day is taken up from the apartment building that is  
13 on the corner of Nebraska and Connecticut. An additional large  
14 apartment building without adequate parking would only increase  
15 the problems that we have currently.

16 Light is our second concern. The large building  
17 that is currently at the corner of Nebraska and Connecticut  
18 already cast significant shadows over the front of our houses.

19  
20 Large developing across the east side of  
21 Connecticut at anything other than four or five stories, and  
22 certainly anything above five, would only decrease the light  
23 that we current get in the back which happens to be where our  
24 gardens are and I would seriously doubt those would survive.

25 Most of us moved to this neighborhood because we

1 like it. It's interesting. It's old and it has a lot of  
2 charm. If you've ever been to Hong Kong where everything is  
3 the same height, very high, it's not a very pleasant place to  
4 live. We would very much -- very much with respect to our  
5 property value and our quality of life ask you to consider  
6 anything below R-4. Thank you.

7 CHAIRPERSON MITTEN: Thank you. Before you leave,  
8 any questions for Ms. Kovner? Thanks.

9 Ms. Kovner, the court reporter needs you to give  
10 him your cards.

11 Any other persons in support? All right. Now  
12 we'll move to persons in opposition.

13 Mr. Robert Stiehler. Pardon me for mispronouncing  
14 that. And Mr. Robert Conrad.

15 MR. STIEHLER: I don't have a written statement.  
16 I'm not going to read my testimony. I have submitted  
17 previously a letter which has most of it. I made corrections  
18 in this but there are a few things I have added and I would  
19 like to emphasize some of those.

20 CHAIRPERSON MITTEN: Please do.

21 MR. STIEHLER: When Chevy Chase, D.C., was  
22 developed, only single family homes were allowed on the east  
23 side of Connecticut Avenue except for the then existing Chevy  
24 Chase school later named Elizabeth V. Brown School, in the  
25 block between McKinley and North Hampton Streets.

1 Over the years land between Livingston Street and  
2 Chevy Chase Circle was rezoned commercial. Land between  
3 Livingston Street and Nebraska Avenue was zoned to permit high  
4 density residential buildings.

5 ANC-3G is now trying to reverse this established zoning based  
6 on the nebulous comprehensive plan.

7 I would like to read one other section. The land  
8 between Nebraska Avenue and Harrison Street on the west side of  
9 Connecticut Avenue is outside the covenant and has high density  
10 apartments but no single family residents. This land is  
11 directly opposite land in the block proposed to be down zoned.

12 High density residential dwellings are especially  
13 desirable in both blocks since only Nebraska Avenue and Porter  
14 Street have bus routes adjacent to residential land on  
15 Connecticut Avenue.

16 Residents in high density apartments are more likely to use  
17 public transportation than those in single family homes.

18 Those are the two major changes that I have put in  
19 the thing. There is still a minute left. I'll see if there is  
20 anything else I would like to emphasize.

21 Oh, residential land. On both sides of Connecticut  
22 Avenue between Military Road and Livingston Street has only  
23 high density residential housing. A high density apartment  
24 also exist on the east side of Connecticut Avenue between  
25 Jocelyn and Kanawa Streets.

1           No feature of the land on the east side of  
2           Connecticut Avenue between Nebraska Avenue and Jocelyn Street  
3           differs from residential land north of Jocelyn Street to  
4           warrant down zoning.

5           I think those are the three major items that I  
6           would like to emphasize.

7           CHAIRPERSON MITTEN: Thank you very much. We do  
8           have your March 5th letter in the record and have had a chance  
9           to look at that. Thank you.

10          MR. STIEHLER: Well, this repeats pretty much plus  
11          other things.

12          CHAIRPERSON MITTEN: Very good. Thank you.

13          Mr. Conrad.

14          MR. CONRAD: I've been visiting this area --

15          CHAIRPERSON MITTEN: Could you state your name for  
16          the record and your address?

17          MR. CONRAD: Robert Conrad. I live currently -- I  
18          have lived at 5115 Connecticut Avenue which is owned by the  
19          Reyes. I have lived at 5113 Connecticut Avenue. I am  
20          presently and have in the past lived at 5109 Connecticut  
21          Avenue. I walk the alley and I walk the street up to, or close  
22          to, the circle almost every day. I'm very familiar with it and  
23          have lived there since June of 1993. I have been visiting this  
24          area and seen the changes since at least 1974.

25          What I want to say is that I don't have anything

1 against the neighbors who are concerned about change but  
2 without change there's no growth, there's no tax base, there's  
3 no future for this city. We have a very temporary aberration  
4 of a surplus but that is not realistic if everybody says change  
5 only somewhere else. Develop only somewhere else.

6 To me the -- I mean, I do a variety of personal and  
7 business consulting and looking at this from a fact-finding  
8 standpoint, the real issues here are basically quality of life,  
9 to me, fear of change, and people's property values.

10 As far as a quality of life issue, all of us who  
11 live in D.C. and all of us -- I mean, I've lived in Los Angeles  
12 and San Francisco and Silicon Valley and Tokyo. Every city in  
13 the world has these kinds of issues.

14 I guess the main thing I want to say is the  
15 predominate -- I think what is skewed here is there's only one  
16 person, in my opinion, and that's Martha Thompson's home that  
17 is right on Nebraska, that is severely impacted by the traffic  
18 coming through the alley. I mean, she is right there, right on  
19 that corner.

20 I just don't buy that right now from my count  
21 there's one garbage truck coming in on Wednesday to pick up my  
22 garbage. I don't know where the other garbage trucks are  
23 coming in. In the past there have been other pickups of  
24 dumpsters but I thought that was once a week. The future I  
25 don't know about.

1           The biggest problem is not the alley. The biggest  
2 problem is poor and inconsistent police protection, poor and  
3 inconsistent city services, and utility services. If I was  
4 being electrocuted and somebody called PEPCO, they might come  
5 out eventually. They might come out eventually.

6           CHAIRPERSON MITTEN: I need you to summarize now.

7           MR. CONRAD: Okay. And so the quality of life  
8 issues really center around a lot of accidents almost every  
9 week at Connecticut Avenue and Nebraska. These are people  
10 coming from Maryland or Northeast Washington. They are not  
11 people that live in the area there almost in all cases.

12           To me the real legal issue, though, is equal  
13 protection under the constitution and whether or not we want to  
14 let people die and pass on without being able to ever sell  
15 their property because this is the trend on this block. I have  
16 some major concerns about the fairness of not letting anything  
17 be developed on this block.

18           CHAIRPERSON MITTEN: Thank you. Thank you for  
19 sharing. Maybe just hold your seat and see if any of the  
20 Commissioners have any questions.

21           MR. STIEHLER: Could I read the conclusion? I  
22 forgot to read it.

23           CHAIRPERSON MITTEN: Sure.

24           MR. STIEHLER: In conclusion, the Zoning Commission  
25 is urged to retain present zoning on Connecticut Avenue. In

1 lieu of down zoning, a limitation on the height of high density  
2 residential buildings to that of the highest existing apartment  
3 building is recommended. We do not want towers in Chevy Chase  
4 like those in Tenley Valley.

5 CHAIRPERSON MITTEN: Thank you. Any questions for  
6 these gentlemen? Thank you both for your testimony.

7 Now we'll have a panel from Shaw Pittman and  
8 Sunrise, Maureen Dwyer, Alice Prince, and Sean Ambrose, please.

9 MS. DWYER: Thank you. For the record, Maureen  
10 Dwyer with Shaw Pittman, also a resident of the District of  
11 Columbia.

12 Most of what I've heard this evening focuses on one  
13 of the three blocks that the Commission is considering down  
14 zoning. Most of the testimony is focused on square 1989. A  
15 lot of the testimony are about issues that are not Zoning  
16 Commission issues in terms of whether or not to change the  
17 zoning on a piece of property.

18 We are not here to close an alley. This is not  
19 about closing a stub alley or opening a stub alley. We're not  
20 here to argue the merits of a building permit that is on  
21 appeal.

22 Your decision, as we pointed out in the document we  
23 filed, has to be based on the Zoning Enabling Act and the  
24 comprehensive plan. We do not see anything in the record to  
25 justify or support a down zoning.

1 In fact, there was a lot of testimony by the Office  
2 of Planning about what they looked at and they looked at the  
3 character of the existing squares and the character of the  
4 area.

5 If you look at the character of the existing  
6 squares in some of the photographs that we supplied in the  
7 record, and you take into consideration that if you down zone  
8 76 percent of these properties are nonconforming, then the  
9 character of these squares is R-5-D. It is not some other  
10 zoning category.

11 The other point I want to make is we hear a lot  
12 about the comprehensive plan. The comprehensive plan calls for  
13 this and calls for that. The comprehensive plan is not a  
14 zoning map. It is not just the land use map. This is the  
15 comprehensive plan.

16 It is two inches of important city policies. We've  
17 gone through in our statement many of those policies. You have  
18 to look at larger public policies and not simply what one group  
19 of neighbors may want for the properties that abut their homes.

20 Connecticut Avenue is a major arterial. If you  
21 look through all the comprehensive plan policies, it calls for  
22 development on major arterials which is why the R-5-D zoning  
23 was put there in the first place. It is the place to  
24 concentrate population because it serves important  
25 transportation objectives.



1 And the other fact you have to keep in mind is that  
2 Ward 3 has the highest percentage of the elderly. What this  
3 down zoning is about is an attempt to block a project that will  
4 provide assisted living for the elderly. There are very  
5 important city policies that need to be carried out in a  
6 comprehensive plan.

7 There was also discussion about the mayor and his  
8 neighborhood action summit. If you'll turn to what we filed in  
9 Exhibit C, I would like to quote what this neighborhood  
10 established as their neighborhood priorities.

11 Elderly services. This neighborhood includes a  
12 very high concentration of senior citizens. People express a  
13 desire for continued and increased services to seniors. At the  
14 end of that three-page document it says, "Important note. In  
15 view of the fact that the Connecticut Avenue corridor contains  
16 one of the greatest concentrations of seniors in the country,  
17 the needs of the elderly must be considered in the mayor's  
18 budget."

19 All of the comprehensive plan policies for this  
20 area of the city, even the Ward 3 element, talks about the  
21 larger public policy issues. You must consider those in  
22 looking whether or not to change the zoning on a particular  
23 piece of property.

24 Issues having to do with construction, traffic in  
25 an alley, those are issues that other agencies deal with. If

1 there's a problem with congestion in an alley, DPW can be  
2 contacted.

3 If there's a concern that construction is not being  
4 done in accordance with a permit, there are city permit  
5 officials that deal with that. Those are not reasons to down  
6 zone significant blocks of city property in an area that is  
7 right now characterized by eight and nine-story buildings.

8 The Regency House, one block up, is city housing  
9 for the elderly. It's nine stories in height. It will become  
10 nonconforming. In the next block is another large apartment  
11 building.

12 Even in this block there is some question in the  
13 record about whether there's a covenant on the property. If  
14 there is a covenant that's been violated, there's a four-story  
15 apartment building in this square. We are not talking about an  
16 area of the city that is appropriate for garden style  
17 apartments. Perhaps the rest of the square but for  
18 this frontage on Connecticut Avenue, what the city has  
19 recognized when it put the zoning there, what the comprehensive  
20 plan calls for, and what we submit you must consider is the  
21 fact we are talking about Connecticut Avenue high density  
22 development and buildings that are already there.

23 If you change the zoning, they become nonconforming  
24 structures, nonconforming uses, problems in obtaining  
25 financing, problems in obtaining insurance, question about

1 whether they can rebuild in the event of fire.

2 For a facility that is providing housing for the  
3 elderly, which has so many licensing requirements, to now say  
4 that every time it applies for a license it has to explain why  
5 it's an nonconforming structure and a nonconforming use --

6 CHAIRPERSON MITTEN: Can I get you to summarize  
7 now?

8 MS. DWYER: In summary, we do not believe that when  
9 you consider what you are required to consider, the Zoning  
10 Enabling Act, the comprehensive plan, all of the comprehensive  
11 plan, all of the policies, that this down zoning makes any  
12 sense for this city.

13 CHAIRPERSON MITTEN: Thank you. Ms. Prince.

14 MS. PRINCE: Good evening members of the  
15 Commission. I'm testifying tonight probably as much as a  
16 resident of Chevy Chase as an attorney with Shaw Pittman. I've  
17 lived in Chevy Chase, D.C. for 12 years near the intersection  
18 of Military and Nebraska. Prior to that I lived at 4707  
19 Connecticut Avenue, a large apartment building for which the  
20 avenue is so well known.

21 It's a wonderful neighborhood but it is not an  
22 entirely quiet residential enclave. It is divided by major  
23 arterials such as Connecticut Avenue and Nebraska Avenue. It  
24 is a city neighborhood with all of the benefits and all of the  
25 burdens.

1 I strongly opposed the proposed down zoning. As  
2 Maureen mentioned, a very significant percentage of the land  
3 area within the area to be down zoned is already developed or  
4 has a permit to be developed to an R-5-D level.

5 Sixty percent can be built to an R-5-D level.  
6 Seventy-six percent becomes nonconforming under R-3 zoning.  
7 You need to think about what a neighborhood looks like before  
8 you rezone it. Viable residential uses are not something that  
9 you want to phase out.

10 It's a fundamental tenet of land use planning that  
11 the density is put along the major arterials to buffer the  
12 adjacent neighborhoods. It is an extremely common thing to see  
13 all up and down the Connecticut Avenue corridor instances of  
14 multi-story apartment buildings that are separated from a  
15 single family home by an alley. In some cases there's not even  
16 an alley.

17 Kanawa Street, there are several photographs in the  
18 record. Kanawa Street, you'll see that. Legation Street,  
19 Cumberland Place, and, yes, right across the street in the  
20 apartment building at the northwest corner of Connecticut  
21 Avenue and Nebraska there is an apartment building that is  
22 separated by a 15-foot alley from an R-2 zoned house. It is a  
23 common situation. It is nothing unusual. It is Connecticut  
24 Avenue. It's where I've lived for 15 years and that's what  
25 it's like.

1           As Maureen said, the comprehensive plan, you can't  
2           just look at the map like it's a zoning map. We get into a  
3           major danger zone when you go down that route. That is not  
4           what it is. It's a big thick document and it says lots of  
5           stuff.

6           It says that you need to accommodate the elderly.  
7           It says you need to promote increased densities along major  
8           arterials, to promote housing for the elderly. It says that  
9           this is where high density use belongs.

10          If you are so concerned about the comprehensive  
11          plan, I have a major equal protection issue to raise. There  
12          are two other significant portions of the avenue that have the  
13          identical zoning and the identical land use designation in the  
14          comprehensive plan.

15          Those areas are the east side of Connecticut Avenue  
16          from Woodly to Cathedral, a lovely block developed with many  
17          high density apartment buildings. Don't get me wrong. I don't  
18          suggest you down zone that either, but you would look at what's  
19          there before you down zoned it.

20          Similarly the west side of Connecticut Avenue from  
21          Florida to Wyoming, same kind of situation. There's a hotel.  
22          The hotel Sofitel is in that block -- several blocks on the  
23          west side.

24          For these reasons I urge you to retain the existing  
25          R-5-D zoning.

1 CHAIRPERSON MITTEN: Thank you. Mr. Ambrose, we're  
2 going to give you five minutes.

3 MR. AMBROSE: Good evening, Chairman Mitten and  
4 members of the Commission. My name is Sean Ambrose and I am  
5 pleased to be here this evening to testify on behalf of Sunrise  
6 Connecticut Avenue Assisted Living Limited Liability Company.

7 We are the owners of 5113 Connecticut Avenue, 5205,  
8 and 5203 Chevy Chase Parkway. We are the contract owners of  
9 5111 Connecticut Avenue, 5115 through 5125 Connecticut Avenue,  
10 and 5201 Chevy Chase Parkway.

11 CHAIRPERSON MITTEN: I'm just going to interrupt  
12 you because I know that you know that we're very sensitive to  
13 the subject matter as it relates to your property. What we  
14 would be especially interested in is the nonconforming aspect  
15 of it.

16 MR. AMBROSE: Sure. Well, that's going to limit me  
17 again a little bit. As you know, for the past two and a half  
18 years we've been engaged in the process of developing that  
19 particular site and these properties that we're talking about  
20 that are located within the southern most block of the three  
21 block area proposed for the down zoning from R-5-D to R-3.

22 This site occupies almost two-thirds of that land  
23 area in that southern most square. Sunrise is here tonight to  
24 strongly oppose the proposed down zoning for several reasons.  
25 We selected the subject site because of its location along a

1 major arterial in Ward 3 which has an extremely high population  
2 of elderly residents.

3 The comprehensive plan and current zoning strongly  
4 support the provision for additional housing, particularly for  
5 the elderly along major arterials. Typically we find our  
6 facilities serve many of the residents of the immediate  
7 neighborhood and are appropriately located given the sites R-5-  
8 D zoning and Connecticut Avenue location.

9 We've been advised by the Office of Planning that  
10 our right to construct the project is fully vested and  
11 grandfathered, yet here we are tonight to talk about a down  
12 zoning of that property.

13 If down zoned, our site will become nonconforming  
14 and reduce the permitted density by 50 percent. We've had  
15 numerous discussions with the Office of Planning and staff  
16 regarding our project and the development envelope that's  
17 necessary for a project to move forward and be viable.

18 I admit I'm baffled how we could be here tonight  
19 under a recommendation that our parcel be rezoned to a zoned  
20 district that would not permit the construction of our project.

21 We would suggest that because of this down zoning  
22 that it would be appropriate to create a situation whereupon  
23 the completion of this, our newly constructed building would be  
24 grossly nonconforming and it doesn't make any sense at all.

25 I truly don't understand the purpose of the down

1 zoning as it relates to the projects. There are large  
2 significant structures that would be devoted to -- that are  
3 devoted to viable residential uses that would be nonconforming.

4 I know Maureen has touched on some of this so I  
5 won't go over a lot of it but we've been working very hard to  
6 create an assisted living facility on Connecticut Avenue that  
7 is keeping with the goals and policies of the comprehensive  
8 plan. This is our first project in the District and we hope it  
9 will be our flagship property with the possibility of other  
10 sites to follow.

11 We've met with Mayor Williams and he has actually  
12 visited some of our residences. We find the current proposal  
13 completely inconsistent with the recent actions of the District  
14 and support that we've received from various departments and  
15 agencies of the District of Columbia.

16 We urge you to ensure that our project is protected  
17 and respectfully request that this down zoning request be  
18 denied. Thank you for your time and your careful consideration  
19 in this matter.

20 CHAIRPERSON MITTEN: Thank you.

21 Any questions for this panel from the Commission?

22 COMMISSIONER HOLMAN: I've got one.

23 CHAIRPERSON MITTEN: Okay. Go ahead.

24 COMMISSIONER HOLMAN: One is for Ms. Prince. You  
25 were talking about the two areas of Connecticut Avenue that



1 were analogous to this one. I was trying to write fast but you  
2 were talking even faster.

3 MS. PRINCE: The west side of Connecticut Avenue  
4 between Woodly Road and Cathedral Avenue is designated moderate  
5 density residential and is zoned R-5-D. The second area is the  
6 west side of Connecticut Avenue from Florida up to Wyoming.

7 COMMISSIONER HOLMAN: Okay. All right. And the  
8 other question was for Ms. Dwyer. Explain in a little more  
9 detail, not a lot, but why -- you seem to be saying that under  
10 the Zoning Enabling Act this is not even an application we  
11 should be considering. I must admit I just got this today so I  
12 haven't read it in any detail.

13 MS. DWYER: Under the Zoning Enabling Act it sets  
14 forth the purposes of zoning. When you look at the purposes of  
15 zoning we believe that the down zoning does not meet the test.

16 For example, one of the purposes of zoning is that  
17 the Commission promote the distribution of population to create  
18 conditions favorable to health, safety, transportation,  
19 protection of property. This is one of the reasons why zoning  
20 districts are created that concentrate population where the  
21 areas can accommodate it; at Metro stops, on major arterials.  
22 We believe that to down zone this property is, in effect,  
23 dispersing the population to other areas of the city that may  
24 not be able to support it so it's contrary to that purpose of  
25 the Zoning Enabling Act.

1 Another goal is to further the economy and  
2 efficiency and supply of public services. Again, you have a  
3 location here where the public services are in place. You have  
4 a major arterial. You have a major transportation corridor.  
5 You have a commercial establishment one block away to meet the  
6 needs of the area residents. Everything is in place to meet  
7 the needs of the residents. To say that we are going to reduce  
8 the residential population at this location we believe is  
9 contrary to that purpose.

10 Another factor under the Zoning Enabling Act is  
11 property values to the extent that the structures would become  
12 nonconforming. In this case, it's a very significant factor  
13 both in terms of use as well as structure. When you apply the  
14 R-3 or R-4 zoning requirements to the existing buildings, a  
15 significant, in fact, 76 percent of them are nonconforming in  
16 some respect.

17 So in addition to looking at the comprehensive  
18 plan, the Commission has to consider the purposes of zoning.  
19 We do not believe that this down zoning carries out the  
20 purposes of zoning. In fact, we think it's contrary to those  
21 purposes.

22 COMMISSIONER HOLMAN: But I guess where I'm having  
23 trouble with that, it's almost like you're saying as a matter  
24 of law this is not even something that we can consider. I  
25 think that the purpose of these hearings is to find out if

1 there are, in fact, justifiable facts that would support or  
2 deny this kind of application.

3 My problem is that you seem to be saying on its  
4 face this application shouldn't be considered. Maybe it's in  
5 conjunction with the other issues that you raised.

6 MS. DWYER: What we had suggested in our motion is  
7 that when you look at all of the issues, it suggest that it's  
8 not appropriate for this to go forward. There are a lot of  
9 unanswered questions in terms of what the real impact is of  
10 this.

11 We don't believe there is sufficient evidence in  
12 the record that talks about what the economic impact is. I  
13 think that on the record before you, and in the record that we  
14 reviewed before coming down here, we felt that it was so  
15 insufficient that it did not even warrant going forward at this  
16 time but certainly this hearing has developed, we think, more  
17 information for you and we believe more information in support  
18 of our position.

19 COMMISSIONER HOLMAN: Thank you.

20 COMMISSIONER PARSONS: I may have missed it but I  
21 don't think any of you commented on the Office of Planning  
22 Report and their proposal for R-5-B for your property. I'm  
23 talking about it in terms of R-3 and R-4 here tonight and I  
24 don't quite understand that.

25 MS. DWYER: One of the problems --

1 COMMISSIONER PARSONS: You may not like it any  
2 better but I think you ought to be talking about it.

3 MS. DWYER: Yes. I think one of the problems is  
4 that the Office of Planning Report in this case has been a  
5 moving target. It has changed and even again changed this  
6 evening.

7 COMMISSIONER PARSONS: Not for this property.

8 MS. DWYER: Not for this property, no. We looked  
9 at this case as the three blocks, and in terms of even the  
10 nonconformity issue. I think what Office of Planning has  
11 proposed tonight is worse in terms of nonconformity issue.

12 In terms of this block, the R-5-B, as Mr. Ambrose  
13 has pointed out, would still reduce the development potential  
14 of these properties by 50 percent.

15 In the case of the Sunrise project, which has a  
16 building permit, a vested building permit, it is going to be  
17 built to an R-5-D height. The day that it is built and goes  
18 for the state of occupancy, it would be nonconforming. In  
19 light of that, we do not see a basis for reducing the R-5-D to  
20 R-5-B even in square 1989.

21 COMMISSIONER PARSONS: Okay. Now, I've been  
22 through many down zonings and so have you.

23 MS. DWYER: Yes, we have.

24 COMMISSIONER PARSONS: We have always heard  
25 testimony about how these building are uninsurable and if they

1 ever burn to the ground, they can't be built again. Every time  
2 we go through one of these, we ask for the Office of Planning  
3 to research this and you to provide evidence of that.

4 We've had appraisers come in here and testify.  
5 Frankly, the result is there's no impact of a nonconforming  
6 structure. There's no impact on its value. I'm not going to  
7 testify to that.

8 I'm going to tell you that is my experience so if  
9 you want to prove it to us, you better do something other than  
10 what you've done so far to prove that you can't get a loan to  
11 build this thing and it's down the tubes because of what we're  
12 doing. The last four or five times we've done this, it might  
13 have been true in the '60s, '70s, and '80s but it's not true  
14 anymore as far as I know.

15 MS. DWYER: Mr. Parsons, we would be happy to  
16 supply something for the record. One of the differences here  
17 is that you are not only making these buildings nonconforming  
18 structures, you're making them nonconforming uses.

19 I think in the other cases that we've participated  
20 in, it was primarily a question of reduced height and density.

21 Here when you go from R-5-D to R-3, you are reducing  
22 significantly the permitted uses and an apartment building is  
23 not just a nonconforming structure but it's a nonconforming  
24 use. I think it is more significant and I would be happy to  
25 supply that for the record.

1 COMMISSIONER PARSONS: I think we need a little  
2 more than we've got.

3 MS. DWYER: All right. We will do that.

4 CHAIRPERSON MITTEN: Thank you for asking for that,  
5 Mr. Parsons. I think that's going to be very helpful.

6 Any other questions? Mr. Franklin.

7 COMMISSIONER FRANKLIN: Ms. Dwyer, I ask you, if  
8 you can, to just ignore for the moment the Sunrise project.  
9 You set forth the other elements of the comprehensive plan that  
10 should be taken into account. What is there in R-5-B or R-4,  
11 for that matter, that prohibits housing for the elderly?

12 MS. DWYER: I'm not sure that there is anything in  
13 those zones that would prohibit housing for the elderly. I  
14 guess the question would be whether you would be able to  
15 provide sufficient number of housing units for the elderly  
16 population that is in Ward 3.

17 I think because of the high percentage of elderly  
18 in Ward 3, it calls throughout the comprehensive plan for  
19 increasing densities, particularly along commercial corridors.

20 That is why I think the R-5-D zoning which would allow a  
21 higher density promotes that purpose better than an R-4 or an  
22 R-5 category.

23 COMMISSIONER FRANKLIN: But you wouldn't say that  
24 wherever there is R-5-B or R-4 that prohibits elderly housing?

25 MS. DWYER: No, I wouldn't say that would preclude

1 elderly housing. I just don't think it meets the same goal.  
2 In fact, as we also indicated in our filing, the report of the  
3 community as part of the neighborhood action summit again  
4 talked about the need for higher concentrations along  
5 commercial corridors.

6 COMMISSIONER FRANKLIN: Do you have an opinion as  
7 to what the meaning of garden apartment is?

8 MS. DWYER: Well, I'm from New York so a garden  
9 apartment is 30 stories. No, it's probably a term that could  
10 have greater clarity in the comprehensive plan when it's used.

11 COMMISSIONER FRANKLIN: Thank you.

12 CHAIRPERSON MITTEN: Any other questions?

13 Thank you very much.

14 Our last panel is going to be Mr. Docter, Mr.  
15 Tummonds, and somebody with a great name Sunny Reyes.

16 I think we're going to change the order. Is that  
17 right? You need to turn on your microphone. You push a  
18 button. There you go. Identify yourself for the record,  
19 please.

20 MR. REYES: My name is Luis Reyes and I've lived in  
21 Washington for the past 50 years. I'm a veteran of the Second  
22 World War. I met my wife born here in D.C. at Sibley Hospital.

23 I purchased this property on Connecticut Avenue  
24 which Sunrise is interested in it. I bought those properties  
25 about 40 years ago under the GI. I have furnished them,

1 renovated them, and made them into rental units. I paid my  
2 taxes and had no problems with any of the neighbors. No  
3 problem with my tenants. I have plans for the future because  
4 of the zoning that was given to me. I find --

5 CHAIRPERSON MITTEN: You want to take a minute?

6 MR. TUMMONDS: Good evening. My name is Paul  
7 Tummonds. I reside in the District at 1634B Beacon Place N.W.

8 I just wanted to add a couple of things to point out that we  
9 had submitted in our statement earlier today.

10 The first is we've heard reference to the down  
11 zoning application in 1986 in which the Zoning Commission down  
12 zoned a strip of vacant lots and low density structures on the  
13 west side of Connecticut Avenue from the R-5-C district at that  
14 time to R-3.

15 During that application the Chevy Chase Citizens  
16 Association with the strong support of the ANC noted and made  
17 extensive reference to the single family nature of the  
18 properties on the west side of Connecticut Avenue and noticed  
19 how that was in sharp contrast to the multi-family and semi-  
20 detached nature of the residences on the east side of the  
21 street, the east side of the street that we are talking about  
22 today.

23 In 1986 the ANC made a compelling case that the  
24 down zoning of the western side was appropriate because, in  
25 fact, it was significantly different from the higher density



1 eastern side of Connecticut Avenue which we are talking about  
2 today.

3 In addition, just one more note is that along the  
4 entire portion of Connecticut Avenue from Dupont Circle up to  
5 Chevy Chase Circle there is not a single property that is  
6 located in either the R-4 or the R-5-B zone.

7 Again, for these reasons and the reasons cited  
8 earlier by Mr. Ambrose, Ms. Dwyer, and Ms. Prince, we would  
9 recommend that this application not be approved. Thank you.

10 CHAIRPERSON MITTEN: Thank you.

11 Mr. Reyes, did you want to--

12 MR. REYES: Yes. I'm sorry but I'll continue. I  
13 didn't find out that this property, which was bought and given  
14 to me with R-5-C is trying to be taken.

15 CHAIRPERSON MITTEN: Mr. Reyes, if it would be  
16 easier for you to submit something in writing, that would be --  
17 if this is too difficult for you.

18 Why don't you go ahead, Mr. Docter.

19 MR. DOCTER: I'm Charles Docter. I'm here on  
20 behalf of the estate of Francisco Coll-Monge, the owner of four  
21 of the properties in square 1989.

22 We've had a lot of discussions about the arterial  
23 nature of the site at Connecticut and Nebraska which is 1989  
24 square. Even the Office of Planning in its flip flops in  
25 connection with this down zoning application has recognized

1 that they have to treat that corner a little bit differently  
2 because there's a bus route there among other things.

3 I think what we're trying to do under the  
4 comprehensive plan is promote livability. If we're not going  
5 to have high rise in places like arterials where the bus route  
6 appears, we're not going to bring more people into the District  
7 of Columbia. I think it's important to have more housing units  
8 and this is the place to do it.

9 Now, a lot of high rise are on Connecticut Avenue  
10 as apartment buildings. They all have alleys behind them.  
11 Things have worked out all right over the years so there's a  
12 basic question of whether you want to change this right now in  
13 this particular area.

14 I think the property values in the neighborhoods  
15 that are along Connecticut Avenue have not been adversely  
16 impacted at all by these high rises. They've have effects on  
17 the neighborhoods but some of the best single family homes real  
18 estate in the District of Columbia is adjacent to the areas  
19 around Connecticut Avenue.

20 They all have high rise apartments. Why this area  
21 should suddenly be singled out is not clear. I think the  
22 emotion that Mr. Reyes shows as an owner is extremely important  
23 here. This is a down zoning case.

24 There's another group that my client represents  
25 and, that is, unfortunately my client's estate may very well be

1 insolvent. There are a lot of his creditors that have relied  
2 on what he owned and what will happen is if you down zone this  
3 property, those creditors will also be affected adversely.

4 In addition to that, as we've said before, there's  
5 an equal protection issue here. What's very interesting is  
6 that now we have recommendations from OP to have R-4 or R-5-B  
7 zones. Yet, along the entire stretch of Connecticut Avenue  
8 from Dupont Circle to Chevy Chase Circle, there is not a single  
9 property --

10 CHAIRPERSON MITTEN: You need to wrap it up.

11 MR. DOCTER: -- on Connecticut Avenue that has been  
12 so zoned as R-4 or R-5-B. You not only have the problem that  
13 was pointed out between Woodly and Cathedral and near Kanawa  
14 Street and Wyoming or Kalorama Road, Florida Avenue and  
15 Wyoming, but you also have the fact you're creating a brand new  
16 zoning designation on Connecticut Avenue which certainly  
17 creates legal problems that should be considered and they are  
18 raised in our motion. Thank you.

19 CHAIRPERSON MITTEN: Thank you, Mr. Docter.

20 Did you want to submit something in writing?

21 MR. REYES: I think that Sunrise will help that  
22 particular area where I have lived for 40  
23 years --

24 CHAIRPERSON MITTEN: I think we understand what  
25 you're trying to convey. Thank you.

1 Any questions for these folks?

2 Thank you all for your testimony.

3 Mr. Bastida, have you had a chance to confer with  
4 the ANC about what date would be -- would work for them in  
5 terms of closing the record?

6 MR. BASTIDA: She was looking into that and she  
7 will state it now.

8 MS. HOLMES: This is Marilyn Holmes from the ANC.  
9 We are willing to try to discuss these issues at our April 9th  
10 meeting but we would need some time after that to prepare a  
11 submission. What date would you suggest? What date would be  
12 preferable to the Commission?

13 CHAIRPERSON MITTEN: We're going to ask Mr.  
14 Bastida.

15 MR. BASTIDA: There are several items that the  
16 Commission has requested and I think an appropriate time will  
17 be if the meeting is on the 9th, they would be submitted by the  
18 close of business on the 20th of April. I would like to go  
19 over the items that I wrote down for the Commission.

20 CHAIRPERSON MITTEN: Right. Let's make sure that's  
21 going to work for you, Ms. Holmes.

22 MS. HOLMES: We'll meet that deadline. Sure.

23 CHAIRPERSON MITTEN: Very good. Thank you.

24 Okay, let's go through the list.

25 MR. BASTIDA: Okay. The ANC official position on

1 the Office of Planning Report. Ms. Chiapella's testimony, a  
2 copy of the testimony in writing. Mr. Gill to submit a revised  
3 testimony. I need a notarized affidavit of maintenance by the  
4 ANC.

5 MS. HOLMES: Yes. You have the original affidavit.  
6 You have a notarized original affidavit of posting. You have  
7 a supplementary affidavit of maintenance. There is one  
8 additional affidavit we prepared and because of the rain we had  
9 to repost and I will submit to you but you have the first two.

10 MR. BASTIDA: It has to be notarized. Okay?

11 MS. HOLMES: Yes, it will be notarized.

12 MR. BASTIDA: Thank you. Maureen Dwyer from Shaw  
13 Pittman to provide information on the negative economic impact  
14 the down zoning would have. That concludes my list.

15 CHAIRPERSON MITTEN: Okay. There was one thing  
16 that we didn't ask for but I had made a note of it. If Ms.  
17 Thompson could submit those photographs that you had slides of.  
18 If you could submit photographs.

19 MS. THOMPSON: They're in there.

20 CHAIRPERSON MITTEN: They're in there? Okay.  
21 Great.

22 MS. DWYER: And I think we were also asked to  
23 comment on the Office of Planning Report, the latest report.

24 CHAIRPERSON MITTEN: That's fine.

25 Mr. Parson?

1 COMMISSIONER PARSONS: I think we need some  
2 evaluation of this deed of covenants that has been presented to  
3 us tonight. I guess core counsel is the place to go for that.

4 CHAIRPERSON MITTEN: Ms. Nagelhout, did you hear  
5 Mr. Parsons' request?

6 MS. NAGELHOUT: I did. I don't have a copy of it  
7 but if you want to pass it along.

8 COMMISSIONER FRANKLIN: Madam Chair, I do think  
9 that's an interesting issue. I'm not even sure that the Kay  
10 Schneider or Kay Company is still in existence, the beneficiary  
11 of the covenant. The question is whether the covenant today  
12 has any meaning or whether there has been a successor in title  
13 who would be entitled to it. It would be interesting if  
14 somebody could tell us something.

15 CHAIRPERSON MITTEN: I think Ms. Nagelhout is going  
16 to help us out with that. We look forward to that.

17 AUDIENCE MEMBER: May I add something?

18 CHAIRPERSON MITTEN: No, ma'am. No, ma'am. Thank  
19 you.

20 Ladies and gentlemen, the other members of the  
21 Commission, I wish to thank you.

22 You have a question? I was getting ready to enter  
23 my spiel. Go ahead.

24 MR. ALTMAN: And it was a good spiel. We all want  
25 to go home. I only wanted to say for the record that the only

1 change in the OP report that has been referenced here in the  
2 latest one are the two parcels, the two properties, in terms of  
3 bringing them into consistency of a moderate density zone. I  
4 just wanted to say there has been a question of flip flop of  
5 the position since the last report has been -- that's the only  
6 change.

7 CHAIRPERSON MITTEN: Okay.

8 MR. ALTMAN: We'll circulate that to everyone.

9 CHAIRPERSON MITTEN: Okay. Thank you.

10 The other members of the Commission, I wish to  
11 thank you for your testimony and participation at this hearing  
12 this evening. The record in this case will now be closed  
13 except for the information specifically requested by the  
14 Commission that Mr. Bastida just went through. Any special  
15 information or reports requested must be filed no later than  
16 the close of business 4:45 p.m. on April 20th, 2001, in Suite  
17 210 of this building.

18 The Commission will make a decision on this case at  
19 one of its regular monthly meetings following the closing of  
20 the record. These meetings are held at 1:30 p.m. on the second  
21 Monday of each month with some exceptions and are open to the  
22 public.

23 If any individual is interested in following this  
24 case further, I suggest that you contact staff to determine  
25 whether this case is on the agenda of a particular meeting.

1           You should also be aware that should the Commission  
2       propose affirmative action, the proposed action must be  
3       published in the D.C. Register as proposed rulemaking with a  
4       period of time for comments.

5           In addition, the proposed rulemaking will be  
6       referred to the National Capital Planning Commission for  
7       federal impact review. The Zoning Commission will then take  
8       final action at a public meeting following receipt of public  
9       comments and the NCPC comments after which a written final  
10      rulemaking and order will be published.

11           I now declare this public hearing adjourned.

12           (Whereupon, at 9:54 p.m. the hearing was  
13      adjourned.)

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